

Notable British Trials

Burke and Hare

NOTABLE BRITISH TRIALS SERIES.

Madeleine Smith. Edited by A Duncan Smith,
Advocate.

Dr. Pritchard. Edited by William Roughead

The Stauntons. Edited by J B Atlay, Barrister-
at-Law

Franz Müller. Edited by H B Irving

The Annesley Case. Edited by Andrew Lang

Lord Lovat. Edited by David N Mackay

Captain Porteous. Edited by William Roughead.

William Palmer. Edited by Geo H. Knott,
Barrister at-Law.

Mrs. Maybrick. Edited by H. B Irving

Dr. Lamson. Edited by H L Adam

Mary Blandy. Edited by William Roughead

City of Glasgow Bank Directors. Edited by
William Wallace, Advocate

Deacon Brodie. Edited by William Roughead.

James Stewart. Edited by David N Mackay

A. J. Monson. Edited by J W More, Advocate

Oscar Slater. Edited by William Roughead

Eugene Marie Chantrelle. Edited by A Duncan
Smith, Advocate.

The Douglas Cause. Edited by A. Francis
Steuart, Advocate.

Mrs. M'Lachlan. Edited by William Roughead.

Eugene Aram. Edited by Eric R. Watson,
Barrister-at-Law

J. A. Dickman. Edited by S O. Rowan-
Hamilton, Barrister-at-Law

The Seddons. Edited by Filson Young

Sir Roger Casement. Edited by Geo H Knott,
Barrister-at-Law.

H. H Crippen. Edited by Filson Young.

The Wainwrights. Edited by H B Irving

Thurtell and Hunt. Edited by Eric R. Watson

Burke and Hare. Edited by William Roughead.

IN PREPARATION

Mary Queen of Scots. Edited by A. Francis
Steuart.

Steinie Morrison. Edited by the Hon. H.
Fletcher Moulton.

George Joseph Smith. Edited by Eric R. Watson.

Particulars may be had from the Publishers.

Wm. Hodge & Co, Ltd., Edinburgh and London.



Burke and M'Dougal at the Bar.
From a Drawing made in Court

Burke and Hare

EDITED BY

William Roughead

Author of "Twelve Scots Trials," "The Riddle of the
Ruthvens," &c.

ILLUSTRATED

AUSTRALIA

BUTTERWORTH & CO.
(AUST.), LTD.

170 KING STREET
SYDNEY, N.S.W.

NEW ZEALAND

BUTTERWORTH & CO.
(AUST.), LTD.

138 LAMBTON QUAY
WELLINGTON

INDIA

BUTTERWORTH & CO.
(INDIA), LTD.

6 HASTINGS STREET
CALCUTTA

MADE AND PRINTED IN GREAT BRITAIN
BY
WILLIAM HODGE AND COMPANY, LTD
GLASGOW AND EDINBURGH

TO

HARVEY LITTLEJOHN

PROFESSOR OF FORENSIC MEDICINE IN THE UNIVERSITY OF EDINBURGH

THIS ACCOUNT OF SCOTLAND'S GREATEST CRIMINAL CAUSE

P R E F A C E.

FOR the text of this report of one of our most famous trials I have consulted the following authorities (1) The official record of the proceedings in the Books of Adjournal of the High Court of Justiciary, Edinburgh, (2) *Trial of William Burke and Helen McDougal*, edited anonymously by Charles Kirkpatrick Sharpe, and published by Robert Buchanan, and (3) the report of that trial contained in *West Port Murders*, published by Thomas Ireland. Of these two contemporaneous accounts, both of which, as described in the Bibliography, were issued at Edinburgh immediately after the trial, that of Buchanan, being the more correct and complete, has been in the main adopted, after collation of the evidence as therein reported with the version published by Ireland. The opinions of the judges and the speeches of counsel as given by Buchanan, having been for his edition "by them most obligingly and carefully revised," are here reprinted.

It has unfortunately been found impracticable, from the publishers' point of view, to include in the ordinary edition of this book the elaborate judgments delivered in the proceedings taken against Hare subsequent to Burke's trial, which were published by Buchanan in a supplementary volume, and also were specially revised by the judges for the occasion. These contain a luminous and learned review of the law relating to the admission of *socii criminis* as witnesses in the Scottish Courts, and the effect of such admission upon the question of their own liability to punishment. The extent and nature of these proceedings make them practically a separate trial, and regard being had to their purely legal interest, as well as to the fact that the substance of them is sufficiently stated in the Introduction, it has been thought better to print them at length only in a limited edition. This expansion of the work to two editions is to me personally regrettable; but for its necessity the present conditions under which books are produced must be blamed, rather than excess of subject-matter or the intemperance of the Editor. In respect of accuracy, however, I dare without usurpation assume the honourable boast of Buchanan, that a full and authentic record of this remarkable case is now presented.

Throughout the text I have retained the contemporary punctuation, which differs from that in current use; partly because punctuation, as Mr. Weller said of the value of experience matrimonially acquired, is a matter of taste, and also because to my mind the older fashion helps to preserve the true flavour of the period.

I have read or examined every item contained in the extensive Bibliography of the case which I deemed it my duty to prepare, no attempt hitherto having been made to catalogue and arrange the literary "floral tributes" offered to the memory of Burke and Hare. I cannot claim that my collection is complete, but I hope that it is fairly exhaustive, and I shall be ready to accept in a proper spirit such notice of omissions as may be taken. This Bibliography being, like the proceedings against Hare, of more technical than general interest, it has been with them confined to the limited edition, as also have the notices from contemporary newspapers, illustrative of the case.

In the Introduction I have tried to give as clear a view as is now possible of what is one of the most extraordinary episodes in our social and legal history. There are, as I have indicated, many books about Burke and Hare, but this is the first to combine an account of the whole circumstances with a verbatim legal report of the case. It has, I venture to think, other recommendations on which it would not become me to enlarge. I leave them to the discernment of reviewers, but I may, perhaps, be allowed to point out that the illustrations are more numerous and attractive than those of any former work dealing with the subject. That subject at first sight may appear distasteful, but it has a legitimate and abiding interest, and as I have no desire to make anyone's flesh creep, its uglier and more gruesome aspects are not unduly dwelt upon. The reader has this further advantage that the proof sheets of the Introduction were, to repeat Buchanan's phrase, most obligingly read by Professor Arthur Robinson, of Edinburgh University, who has also favoured me with a Note, here printed in the Appendix, upon the present position of the anatomical schools in relation to the working of the Anatomy Act, for which valuable aid I am most grateful.

I am much indebted to the courtesy of Mrs Reid of Lauriston Castle, Mid-Lothian, and of Mr William Cowan, Edinburgh, for making available to me their respective collections of rarities relating to the West Port murders

W R.

CONTENTS.

| Introduction.— | PAGE |
|-------------------------------------|------|
| I The Body Snatcher, | 2 |
| II The Unholy Alliance, | 11 |
| III The Murder of Mary Paterson | 24 |
| IV The Death of Daft Jamie, | 30 |
| V The Last Straw, | 36 |
| VI Justice, | 43 |
| VII Retribution, | 59 |
| VIII The Immunity of Hare, | 67 |
| IX Nemesis and Dr. Knox, | 77 |
| Leading Dates, | 93 |

The Trial—

FIRST DAY—21TH DECEMBER, 1828

| | |
|--------------------------------------|-----|
| Judges, Counsel, and Agents, | 95 |
| Indictment, | 97 |
| List of Witnesses, | 99 |
| List of Assize, | 102 |
| Defences for the Pannels, | 104 |
| Debate on the Relevancy— | |
| Mr. Robertson, | 105 |
| The Lord Advocate, | 114 |
| The Dean of Faculty, | 118 |
| Opinions of the Judges— | |
| Lord Pitmilny, | 125 |
| Lord Meadowbank, | 127 |
| Lord Mackenzie, | 130 |
| The Lord Justice-Clerk, | 130 |
| Interlocutor of Relevancy, | 132 |
| List of the Jury, | 133 |

Evidence for Prosecution

| | |
|--|--|
| <p>1 James Brindwood, 133</p> <p>2 Mary Stewart or Stuart, 133</p> <p>3 Charles M'Lauchlan, 135</p> <p>4 William Noble, 136</p> <p>5 Ann Black or Connaway, 137</p> <p>6 Janet Lawrie or Law, 143</p> <p>7 Hugh Alston, 145</p> <p>8 Elizabeth Paterson, 147</p> | <p>9 David Paterson, 148</p> <p>10 John Brogan, 153</p> <p>11 Ann M'Dougall or Gray, 154</p> <p>12 James Gray, 159</p> <p>13 John M'Culloch, 162</p> <p>14 John Fisher, 164</p> <p>15 William Hare, <i>locus</i> <i>criminis</i>, 166</p> |
|--|--|

Objection and Debate as to question regarding Hare's concern in other murders—

| | |
|--------------------------------|-----|
| Mr. Cockburn, | 173 |
| Mr. Alison, | 175 |
| The Dean of Faculty, | 175 |

| Opinions of the Judges— | | PAGE |
|--|-----------|--------------------------|
| Lord Meadowbank, | - - - - - | 176 |
| Lord Mackenzie, | - - - - - | 178 |
| The Lord Justice-Clerk, | - - - - - | 179 |
| Interlocutor of Court, | - - - - - | 180 |
| 15 William Hare, <i>recalled</i> , | 181 | 17 Alexander Black, |
| 16 Margaret Land or Haie, | 185 | 18 Dr Robert Christison, |
| Declarations of the Prisoners— | | 193 |
| First Declaration of William Burke, | - - - - - | 196 |
| Second Declaration of William Burke, | - - - - - | 199 |
| First Declaration of Helen M'Dougal, | - - - - - | 202 |
| Second Declaration of Helen M'Dougal, | - - - - - | 204 |
| The Lord Advocate's Address to the Jury, | - - - - - | 205 |
| The Dean of Faculty's Address to the Jury for Burke, | - - - - - | 218 |
| Mr Cockburn's Address to the Jury for M'Dougal, | - - - - - | 236 |
| The Lord Justice-Clerk's Charge to the Jury, | - - - - - | 246 |

SECOND DAY—25TH DECEMBER, 1828

| | | |
|---|-----------|-----|
| Verdict of the Jury, | - - - - - | 253 |
| Lord Meadowbank's Address on Proposing Sentence, | - - - - - | 254 |
| The Lord Justice-Clerk's Address to the Pannel Burke, | - - - - - | 256 |
| Sentence on William Burke, | - - - - - | 257 |
| The Lord Justice-Clerk's Address to the Pannel M'Dougal | - - - - - | 258 |
| Interlocutor Dismissing Helen M'Dougal from the Bar, | - - - - - | 258 |

APPENDICES.

| | |
|---|---------------|
| I. The Confessions of Burke— | |
| I The Official Confession, | - - - - - 261 |
| II The "Covenant" Confession, | - - - - - 266 |
| II Execution of Burke, | - - - - - 272 |
| III. Dr. Knox's Letter to the Newspaper Press, | - - - - - 275 |
| IV Report of the Committee of Investigation as to the Dealings of Dr Knox with the West Port Murderers, | - - - - - 277 |
| V Note on the present Administration of the Anatomy Act by Dr Arthur Robinson, Professor of Anatomy in the University of Edinburgh, | - - - - - 279 |

LIST OF ILLUSTRATIONS.

| | | | | | | | |
|---|---|---|---|---|---|---|----------------------|
| Burke and M'Dougal at the Bar, | - | - | - | - | - | - | <i>frontispiece</i> |
| Surgeon's Square in 1829, | - | - | - | - | - | - | <i>facing page 6</i> |
| Hare and his Wife, | - | - | - | - | - | - | 12 |
| Mary Paterson, | - | - | - | - | - | - | 24 |
| James Wilson, "Daft Jamie," | - | - | - | - | - | - | 31 |
| Interior of Burke's House, | - | - | - | - | - | - | 19 |
| Burke in the Condemned Cell, | - | - | - | - | - | - | 62 |
| Dr Knox Lecturing, | - | - | - | - | - | - | 77 |
| Bill of Dr Knox's Lectures, 1828, | - | - | - | - | - | - | 80 |
| Back View of Burke's House, | - | - | - | - | - | - | 104 |
| Plan of Burke's House and Houses adjacent | - | - | - | - | - | - | 133 |
| Hare's House in Tanner's Close, | - | - | - | - | - | - | 166 |
| Execution of Burke, | - | - | - | - | - | - | 272 |

BURKE AND HARE.

INTRODUCTION.

IN the Anatomical Museum of the University of Edinburgh may be seen, appropriately suspended in a show case, a short thick-set skeleton, bearing upon its exiguous frame a label inscribed with the laconic legend, "William Burke, The Murderer." The tall gentleman with the fine teeth who supports him on the left is, as his card succinctly announces, "Howison, The Diamond Murderer, and last person to be hanged and dissected." But Burke is the doyen of the collection, his companion, though interesting enough in his own way, is a personage of lesser note.

Confronted by these suggestive relics, the observer is moved to reflect how strangely the evil that men do may yet tend indirectly to the general good; for, indeed, Burke is to be considered as in some sort a patron of that great school of surgery in which his bones are thus piously preserved. Were it not for his atrocious doings the Anatomy Act had not passed when it did, nor the followers of a noble science been so early freed from the reproach of trafficking for the subjects of their study with the villainous violators of graves. Burke was a maker of history. With him died what was known as the Resurrectionist system, the fell shadow of which had long darkened the land, though neither he nor his partner Hare, despite the popular belief to the contrary, was ever himself a body snatcher in the technical sense of that picturesque term. He has enriched our language by a new metonymy, and his name is writ for all time in the English dictionary. By the unlettered he is sometimes confounded with his Right Honourable namesake—a vulgar error from which even so shrewd a man as Mr. Jorrocks did not escape.¹

That Burke is entitled to rank high in the calendar of crime is indisputable. His trial is the most famous in the judicial annals of Scotland, by reason of the world-wide interest which the case created, the complicated atrocity of the crimes and the ingenious manner of their commission, the importance of the legal principles involved, and the eminence of the judges and counsel engaged upon its conduct. In an imperfect world we cannot get everything as we would wish it, and in one respect the proceedings were glaringly defective; the absence from the bar of Burke's fiendish associate Hare, whose arraignment would have conduced not only to the ends of justice, but to the uniformity of the series in which the

¹ " 'Fine speech of Burke's; monstrous fine speech,' said the Duke of Donkeyton. 'He was 'ung for all that,' observed Mr Jorrocks to himself, with a knowing shake of the head.'—*Hillingdon Hall*

Burke and Hare.

present volume appears. Finally, the literature of the West Port murders inspired that gisliest of Robert Louis Stevenson's tales, *The Body Snatcher*, wherein, granting the subject to be legitimate matter of fiction—"This talk fit for a chancel," as the Duchess of Malfi says in the play—we are given the very atmosphere of that horrid business, and share in all the terrors of the time. Perhaps the somewhat macabre pleasantries of *The Wrong Box* derive from the same source.

While the circumstances of Burke's case are gruesome beyond the common run of murders, and few would care to have attended the trial when the dreadful tale was first unfolded by the very actors in the tragedy, there are many who find in the written records of such affairs a curious attraction. Thus Edward Fitzgerald, writing of his "wonderful museum" of out-of-the-way matter, remarks, "But my chief article is murderers. I am now having a Newgate Calendar from London. I don't ever wish to see and hear these things tried, but when they are in print I like to sit in Court then, and see the judges, counsel, prisoners, crowd, hear the lawyers' objections, the murmur in the Court, &c—

The Charge is prepar'd, the Lawyers are met,
The Judges all rang'd (a terrible Show!)"²

It is pleasant to find, by the way, that the Gilbertian humours of *The Beggar's Opera*, so dear to Deacon Brodie, were appreciated by the inspired translator of Omar.

Then Lockhart informs us that Sir Walter Scott had a passion for reading murder trials, and kept a collection of such in his library, with the contemporary ballads and broadsheets relating to them, some of these annotated with his own hand. And has not Mr H. B. Irving recorded how Tennyson and Jowett once sat up a whole night discussing—murders? To such, therefore, as share these great men's taste the following report of Burke's trial affords an opportunity to participate, at a convenient remove, in a case of high interest and importance.

I.

The Body Snatchers.

The abuses
Of sacrilege have turn'd graves to viler uses
How then can any monument say,
Here rest these bones till the last day?

—*The Devil's Lane Case*

Visitors to the older Edinburgh graveyards must have noted their strange resemblance to zoological gardens, the rows of iron cages suggesting

² *Letters and Literary Remains of Edward Fitzgerald*, 1903, ii. 201

The Body Snatchers.

rather the dens of wild animals than the quiet resting-places of the dead. And, in fact, these barred and grated cells were designed as a protection against human wolves who nightly prowled about such places in quest of prey, and furnish very real testimony to the fears by which our forbears were beset respecting the security of sepulchres. The Resurrectionist drama, of which Scotland in general and her capital in particular were the theatre, was produced under conditions the most adverse. Not only was its performance illegal, which, as in the case of smuggling, might have mattered little, but it was intensely unpopular, and in sustaining their rôles the players ran, in the fullest sense, grave risks. Belief in the resurrection of the body had ever been held in a strictly literal and material way by the Scots, who, regarding with superstitious veneration the mortal remains of their kindred, were apt to take summary vengeance on the disturbers of their repose. Thus the natural repugnance to dissections of the human body, fortified by religious sentiment, opposed for centuries an insuperable barrier to anatomical research.

The earliest provision for dissection in Edinburgh was made in 1505, when the Town Council granted a charter to the Incorporation of Surgeons and Barberis, whereby it was provided that every entrant should "knew anatomie nature and complexioun of every member In mannis bodie," for which purpose "We [the surgeons] may have anis in the year ane condampnit man efter he be doid to mak anatomie of, quhairthrou we may have experience Ilk ane to instruct uthers, And we sall do suffrage for the soule." Though one malefactor's body per annum, however piously commemorated, would not go very far, the surgeons had to rest content with such provision till 1694, when an effort was made to found a school of anatomy in Edinburgh, and the available subjects were augmented by a further grant of "those bodies that dye in the correction-house, the bodies of fundlings who dye betwixt the tyme that they are weaned and thir being put to schools or trades; also the dead bodies of such as are stiflet in the birth, which are exposed, and have none to owne them, as also the dead bodies of such as are *felo de se*, likewise the bodies of such as are put to douth by sentence of the magistrat." In 1705 the first Professor of Anatomy was appointed with the munificent yearly salary of £15, and in 1720 Alexander Monro, *primus*, succeeded to the duties and emoluments of the Chair. Under him and his son Alexander, *secundus*, appointed in 1751, the anatomical school of Edinburgh was finally and firmly established. In 1798 Alexander, *tertius*, ascended the hereditary rostrum as Professor Monro—"also, but not likewise," according to the nice distinction drawn by John Clerk in the case of the two Lords Meadowbank. The Monro dynasty endured for the long period of 126 years, but, though

Burke and Hare.

the first and second had it all their own way, the supremacy of the last ruler was challenged by a succession of extramural lecturers, of whom the most brilliant were John Barclay and Robert Knox³

It is obvious that the lawful supply of subjects was wholly inadequate to meet the growing needs of the new school, and even before the reign of the Monros the surgeons' and barbers' apprentices had been in use diligently to till the soil and reap the harvest of what has been finely called "Death's mowing." Complaints of rifled graves were frequent, and in 1711 the College of Surgeons demurely records that "of late there has been a violation of sepulchres in the Greyfriars churchyard"—then the chief city burying-ground—"by some who most unchristianly have been stealing the bodies of the dead." In view of the spread of this profane practice due to the success which attended the first Monro's teaching, the Surgeons in 1721 passed the self-denying ordinance that their apprentices' indentures should in future contain a clause forbidding the violation of churchyards. That this restriction was regarded by the students merely as "a scrap of paper" appears from the fact that four years later the continued robbing of graves led to a formidable riot, when Monro's rooms were well-nigh demolished by the mob. At first zealous apprentices were the only body snatchers, but owing to the popularity of the Edinburgh medical school and the great increase of students, there arose a class of men who, adopting as a business the raising of the dead, became known as Resurrectionists. These "honest tradesmen," of whom Mr. Jeremiah Cruncher is in letters the typical example, did not confine their activities to Scotland. A brisk export trade was driven in London, the Leith smack sometimes including in her cargo as many as twelve bodies, consigned to Edinburgh surgeons, while in Ireland the industry was developed by the well-known commercial enterprise of Glasgow. It was unfortunate, and, as the sequel will show, disastrous, that anatomists were thus brought to depend for their supplies upon ruffians of the most abandoned character, instead of being able to meet their wants by justifiable methods.

The penalties for exhumation were stringently enforced, in one year there were fourteen convictions in England, but fines, imprisonment, and even transportation could not counter the equally inexorable laws of supply and demand. Proper skill in practical anatomy was enforced by the Legislature upon every medical man, while the means of securing its pursuit rendered him liable to disgrace and punishment. In this respect, as has been well observed, the law resembled that of Venice as interpreted by Portia—exactng the pound of flesh, it forbade the operation necessary for its removal. In Scotland the increasing boldness of the body snatchers was

³ Struther's *Historical Sketch of the Edinburgh Anatomical School*, 1867, *passim*.

The Body Snatchers.

met by the public with equal vigour, any one suspected of the act was roughly entreated, and such as fell into the hands of justice were severely punished. Certain cases occurring in the year 1742 may be instanced. On 9th March the body of a man which had been buried in the West Kirkyard was discovered in the house of a surgeon, Dr Martin Eccles; the mob, roused, as in the affair of Porteous, by tuck of the Portsmouth drum, wrecked Eccles' premises, and attacked the houses of other surgeons. The riot was with difficulty suppressed, the surgeon was charged before the magistrates as accessory to the raising of dead bodies, but owing to lack of proof was liberated.⁴ On the 13th the Incorporation of Surgeons, met "to testify their abhorrence of so wicked a crime," enacted that any apprentice guilty of the practice should forfeit his indentures, and offered 100 marks for discovery of every such offence. On the 15th the mob fell upon the house of the West Kirk beadle, "calling it Resurrection Hall," and razed it to the ground, despite the owner's protest of innocence, previously published in the newspapers. On the 18th at Inveresk, the house of one Richardson, a gardener, believed to ply his trade illegitimately in the local graveyard, was burnt by the parishioners. On the 26th two Edinburgh chairmen were banished the city for being found at the Nether Bow Port in possession of a dead body seated in a chair. In the following July a gardener at Grange-gateside was sentenced by the High Court to whipping and transportation, having been caught at the Potter-row Port with a bag containing the body of a child which he had lifted from Pentland kirkyard.⁵ Prior to the proceedings against Burke the leading case in this connection was that of Helen Torrence and Jean Walche in February, 1752, cited by Counsellor Pleydell in *Guy Mannering*, which is the sole instance of "Resurrection women" on record. They were charged with *plagium* (man-stealing) and murder, in respect that, having failed to obtain for a surgeon the body of a dead child, they stole a live one, which they slew and sold to him for 2s. 6d. and the price of a dram. Both these lags, employing Burke's ritual, suitably shared his doom.⁶

In the earlier years of the nineteenth century the Resurrectionist movement reached its zenith. While anatomy was taught officially by the University professor, several abler and more attractive lecturers were vying one with another to provide material for their respective demonstrations, and this spirit of rivalry was amply shared by the students who crowded their classrooms. For the honour of their favourite teacher these young Galens grudged neither time nor toil nor heeded any danger in their efforts

⁴This Dr Eccles was the physician who attended in her last illness Lady Jane Douglas, the heroine of the great Douglas Cause—*Defender's Proof*, p. 384.

⁵*Scots Magazine*, LV., 140, 336. ⁶*Ibid.*, LVI., 98-99.

Burke and Hare.

to keep the "table" supplied, and many anecdotes of their prowess were collected by Alexander Leighton, Professor Christison, and other writers who have chronicled their exploits. It is a pity that Leighton's manner—a sort of pious journalese—is apt to estrange readers who care at all for style, as his matter is good, and he was a pioneer in his subject. Some of the tales may here be briefly noticed as illustrative of those stirring times.⁷

The lecturers' rooms were for the most part situated in Surgeons' Square, hard by the old Infirmary in the High School Yards, attached to which was a small burial place for the unclaimed bodies of dead patients. This *infelix campus* was naturally regarded by the students as a happy hunting-ground; they were wont to watch from their windows for interments, and so soon as it was sufficiently dark the first on the field secured the "subject." Occasionally competing claims fell to be decided by force. The body of an old ballad singer named Sandy M'Nab, having sustained the common lot of death and burial, was prematurely raised by young Cullen and other of Barclay's lads, was secreted in a box, and left beneath the window of the classroom to which it was to be drawn up by ropes. Meanwhile Monro's pupils, diligent in their master's service, having got wind of Sandy's demise, discovered the box, which they were proceeding to remove to the University when the original ravishers returned. A conflict ensued, the noise of which aroused the neighbourhood, and the disciples of Monro decamped, leaving those of Barclay in possession of the spoil.

The eminent Robert Liston, in his student days a past-master of these ghoulish arts, is the hero of numerous stories. Repeated raiding of the city graveyards had stimulated the citizens to the utmost vigilance, night watchmen were employed by the wealthy, and the friends of the poor took turns in guarding their remains. Thus the seekers after subjects were driven farther afield. The villages of the Fife seaboard, long the haunt of the bold Free Traders, were now found convenient for other traffic equally dangerous and illicit. Liston, hearing of a curious case at Culross which had baffled the local practitioner, determined to investigate it in person. Accordingly he and a companion, disguised as sailors, rowed across the Firth under cloud of night, lifted the body, and leaving it in a sack beneath a hedge, adjourned to the local change-house for the rest and refreshment due to their labours. As the pair sat by the kitchen fire gossiping with the maid of the inn, a loud hail of "Ship ahoy!" rang through the house. "That," cried the damsel, "must be my brother Bill, I fear he has been drinking"; and to the dismay of the pretended mariners there burst in

⁷ Leighton's *The Court of Cacus*, or *The Story of Burke and Hare*, 1861, *passim*.



Surgeons' Square in 1829.
Surgeons' Hall (left) Dr. Knorr's Rooms (centre) Royal Medical Society Hall (right)
From an Engraving in Sketches of Modern Athens

The Body Snatchers.

a jolly sailor-man whose condition justified the sisterly apprehension, bearing on his back the burden they had left outside "There," said he, casting down the heavy sack, "and if it ain't something good, let them chaps•there that stole it!" He had been dozing behind the hedge and witnessed the abandonment of the bundle. The proprietors were struck dumb,*but the sailor, proud of his prize, cut the rope which bound the mouth of the sack, disclosing the head of a dead man. Brother and sister fled the house in terror, but the guests, shouldering their baggage, made off to the beach, and with the cargo safely under latches were soon pulling for the Lothian shore.

Rosyth, now a name significant throughout the world, as then and for many a long day one of the quietest spots in the "Kingdom," was often the scene of such adventures. On one occasion Liston, reading in the newspapers an account of the burial there of a drowned sailor lad, whose sweetheart was said to have become crazed with grief, set out, supported by some kindred spirits, in a boat to secure the body. When they reached the little burying ground by the shore, they saw in the moonlight the figure of the mad girl, strewing with flowers the grave of her lost love. Presently she departed, and the visitors callously effected their purpose. Indeed, so little were they touched by the pathetic circumstances that one of them put in his buttonhole a flower from the grave. As they re-embarked the girl wandered back again, to find the grave rifled, and her distracted cries followed the successful scientists as they rowed away. A further experience of Liston at Rosyth is recorded. Along with some other students he repaired thither in quest of a farmer's wife, a woman of great beauty, who had died in childbirth. The body raised and laid across the top of the kirkyard dyke, the labourers were recruiting themselves from their flasks, when they were startled by the mournful howl of a dog, and, looking about them, saw approaching among the tombs the light of a lantern. Hastily dragging down their prey the party made off. The lantern-bearer was the bereaved husband, coming to visit his wife's grave; he recognised, entangled in the stones of the dyke, some tresses of her golden hair.

Another Fifo tale is told by Dr Lonsdale.⁸ It was known that a "rare osteological specimen" was to be had in the graveyard of a certain fishing burgh. A lad died of hydrocephalus, whose case created great interest among the several medical men consulted. For weeks the grave was guarded day and night by professional watchers, who despite all overtures to betray their trust proved incorruptible. Time had relaxed the rigour of these precautions, the grave was protected only after dark, when early one evening a dogcart, driven by two well-dressed gentlemen smoking

⁸ *A Sketch of the Life and Writings of Robert Knox, the Anatomist*, 1870, p. 66.

Burke and Hare.

cigars, drew up at the local inn. They alighted, and ordered their horse to be looked after for an hour, as they expected a servant to bring a parcel for them. Some time later a man in smart livery entered the stable yard, deposited in the dogcart a capacious bag, and went his way. Presently the two gentlemen returned from their stroll and drove off, but not before the hostler got a glimpse of red livery beneath the overcoat of one of them. The strangers were Liston and Crouch, the London Resurrectionist, and the contents of their bag, says our author, "found a resting place in the noblest anatomical collection of Britain."

Professor Christison has given his reminiscences of these worthies and their ways. He was himself a student at the time, and his knowledge of the subject is first-hand. The Edinburgh Resurrectionists were, he says, chiefly the assistants of the several teachers of anatomy, with whom he was well acquainted, and from whose information he describes their manner of working:—

A hole was dug down to the coffin only where the head lay—a canvas sheet being stretched around to receive the earth, and to prevent any of it spoiling the smooth uniformity of the grass. The digging was done with short, flat, dagger-shaped implements of wood, to avoid the clicking noise of non-striking stones. On reaching the coffin, two broad iron hooks under the lid, pulled forcibly up with a rope, broke off a sufficient portion of the lid to allow the body to be dragged out, and sacking was heaped over the whole to deaden the sound of the cracking wood. The body was stripped of the grave-clothes, which were scrupulously buried again, it was secured in a sack, and the surface of the ground was carefully restored to its original condition, which was not difficult, as the sod over a fresh-filled grave must always present signs of recent disturbance. The whole process could be completed in an hour, even though the grave might be six feet deep, because the soil was loose, and the digging was done impetuously by frequent relays of active men. Transference over the churchyard wall was easy in a dark evening, and once in the street, the carrier of the sack drew no attention at so early an hour.⁹

Such was the city fashion, in country practice he prescribes a gig as indispensable.

In another of Leighton's stories may be traced the genesis of Stevenson's tale of terror. Three of Monro's students, having hired the harmless necessary gig, drove out to a churchyard "somewhere about Gilmerton." They climbed the wall and raised the object of their quest, the wife of a neighbouring farmer, but, lacking experience, they had omitted to bring with them the regulation sack. So the corpse was hoisted on to the back of the strongest of the party, who, holding it by the shroud, followed the others to where they had left the gig. As the bearer staggered along beneath his ghastly burden the feet of the dead woman, slipping down, every now and then touched the ground, which caused a leaping movement, suggesting to the frightened novice that she had come to life. "By ———,

⁹ *The Life of Sir Robert Christison, Bart.*, 1885, i, 176

The Body Snatchers.

she's alive!" cried he, and, freeing himself from the dreadful incubus, rejoined his friends, to whom he communicated his terrors, and the three adventurers jumped into the gig and fled for their lives. Next morning the farmer found by the roadside the body of his wife whom he had laid to rest but a few days earlier. At first he thought that she had been buried alive; but the Penicuik carrier came up, and having, like Mrs. Hale, "seen such tricks before," offered the true explanation of the matter. Similar in horror is an incident said to have happened at Leven, where the widow of an inn-keeper named Henderson, retiring for the night, found in the box-bed the body of her dead and buried husband, placed there by two students who had raised it and unwittingly brought it to the dead man's own house, when upon some alarm they hid it in the bed and made their escape.

So much for the amateur operators, it remains to glance at the methods of what Leighton calls "the regular staff." Of these Edinburgh professionals at the time in question the most notorious was Andrew Merilees—Andrew Lees, Dr. Lonsdale names him—popularly known to the students as Merry Andrew. The appearance of this miscreant was in keeping with his foul calling—"Of gigantic height, he was thin and gaunt, even to ridiculousness, with a long pale face, and the jaws of an ogre. His shabby clothes, no doubt made for some tall person of proportionate girth, hung upon his sharp joints more as if they had been placed there to dry than to clothe and keep him warm. Nor less grotesque were the motions and gestures of this strange being. It seemed as if he went upon springs, and even the muscles of his face, as they passed from the grin of idiot pleasure to the scowl of anger, seemed to obey a similar power."¹⁰ Associated with this engaging personality as his assistants were three gentlemen of characteristics only less remarkable. First, a clean-shaven demure-looking little man, attired in greasy black, whose grave and precise demeanour suggested a Methodist preacher fallen upon evil days. "Squire" was his sobriquet, probably derived from the facility with which he lifted subjects, the creature was a deaf mute. Secondly, Mowatt, *ditto* "Mouldewarp" (mole), so called in respect of his burrowing propensities, and, thirdly, a mock-minister known as "paying Howard," who specialised in pauper funerals, where he marked down for future use those whom he profanely laid to rest. "The Resurrectionists," says Dr. Lonsdale, who knew their ways well, "were always on the *quai vive* for dying persons without friends, and to know all about their history, and, if possible, to personify the individual of whom the deceased had spoken in his or her last moments. Marvellous were the expedients resorted to by these false claimants of the unprotected dead, and equally marvellous was their success, considering that all the

¹⁰ *Court of Cacus*, p. 45.

Burke and Hare.

varied personifications of character rested with so small a group as three or four men, one of whom had to profess direct kinsmanship with the deceased."¹¹

Leighton tells several stories current among the students concerning the doings of this hideous crew, many of which relate to dreadful bargains driven in whispers by the bedside of the dying. One night a student saw Merrilees lurking in a dark close-mouth, and suspecting his errand, determined to play a trick upon him. Brushing quickly past, he said low in the watcher's ear, "She's dead!" and vanished in the gloom. Instantly Merrilees turned, and hastening up to a house where a woman lay dying, presented his ghastly visage in the sick-room. "It's a' owre, I hear," said he, "and when wull we come for the corp'?" "Wheesht, ye mongrel!" exclaimed the old hag who acted as nurse, "she's as lively as a cricket!" The words were overheard by the terrified patient, with what effect may be imagined. She died the following night, but when Merrilees returned to finish the transaction, accompanied by the "Spune" bearing the requisite sackful of bark to be substituted for the body in the coffin, the nurse exhibited unlooked-for qualms of conscience. "A light has come down upon me frae heaven," said she, "and I canna." While the negotiators of the dead were endeavouring to quench this belated gleam by means of a diam and three pound notes, there entered a respectable stranger, who inquired, "Is Miss Wilson dead? I am her nephew, come to pay her the last tribute of affection." Swiftly the dealers slunk away, but the stranger gave chase, pursuing them till they reached their lair. Nor did he return to bury his relation, the same student who originated the "joke" had thus in disguise completed it.

But Merrilees was not often duped, and another anecdote shows him in a more successful rôle. His sister died at Penicuik, the fact became known to his amiable partners, and in consequence of some pecuniary differences between them, the couple determined to be even with him by anticipating his designs on the deceased. So "Spune" and "Mouchoewarp" hired a donkey cart in which they set forth by night for Penicuik. When, after considerable labour, they had secured their object, a loud shriek resounded through the quiet graveyard, and from behind a headstone rose a tall figure in white, with wildly waving arms. Dropping their spoil the pair fled different ways, and the apparition, divesting itself of its sheet, remarked with a chuckle, "The 'Spune' maun dae wi'oot its parritch this time!" It was the senior partner himself, who having got wind of the hired cart, guessed what was afoot, and thus turned the tables on his colleagues. The surprising sequel is vouched for by Leighton Merrilees,

¹¹ *Life of Robert Knox*, p. 103

The Body Snatchers.

looking for a convenient place near the highroad where he might leave the body "till called for," came upon his friends in the act of regaining their conveyance. His cry of "Stop, thief!" put them again to flight, when he placed the body in the cart and drove comfortably back to town, where he compensated his bereavement by disposing in Surgeons' Square of his sister's remains to the best advantage.

Such was the state of matters anatomical, alike revolting to humanity and debasing to the votaries of science, that obtained in the good city of Edinburgh in the year of grace 1827, when the curtain was about to rise upon the West Port tragedy.

II.

The Unholy Alliance.

Ah, that I might be set a work thus through the year, and that murder would grow to an occupation, that a man might follow without danger of law!

—*Aiden of Terwisham*

By day the precincts of Surgeons' Square presented an edifying air of diligence. No less than six Lecturers on Anatomy were busy teaching and demonstrating in their respective rooms to crowded and enthusiastic classes,¹² a stream of eager students ebbed and flowed through the High School Yards, the whole place hummed like a hive with energy and life. When night fell upon the empty classrooms with their shrouded tables, the silence was unbroken save by the furtive footsteps of those evil ministers whose business it was to furnish material for the day's activities.

On 29th November, 1827,¹³ two men stealthily sought after dark the Old College on the South Bridge, and meeting a student in the quadrangle asked for Dr Monro's rooms. On learning their errand, he, being a pupil of the rival teacher, advised them to try Dr Knox's establishment, No 10 Surgeons' Square. But for this chance encounter Dr Lonsdale believes that the odium which fell upon Knox would have attached instead to Professor Monro. Be that as it may, the strangers, who had proposed to give the University the benefit of their custom, turned away, and having found the rooms in question, had audience of three young assistants who happened to be on night duty. As the visitors were new to the trade and unknown at No 10, some little difficulty was at first experienced in bringing them to the point, but their natural bashfulness being overcome, it appeared that they had a dead body to dispose of, and they learned with surprise that as much as £10 was sometimes given for such commodities.

¹² Drs John W Turner, Atkin, Mackenzie, Liston, Syme, and Knox.

¹³ The date as given by Dr. Lonsdale (p. 73), who probably had it from Knox's books, Burke puts its "about Christmas" (*Official Confession*), but his chronology is notoriously uncertain.

Burke and Hare.

That night the goods were delivered in a sack, and having been approved by the doctor himself, were purchased by him for £7 10s

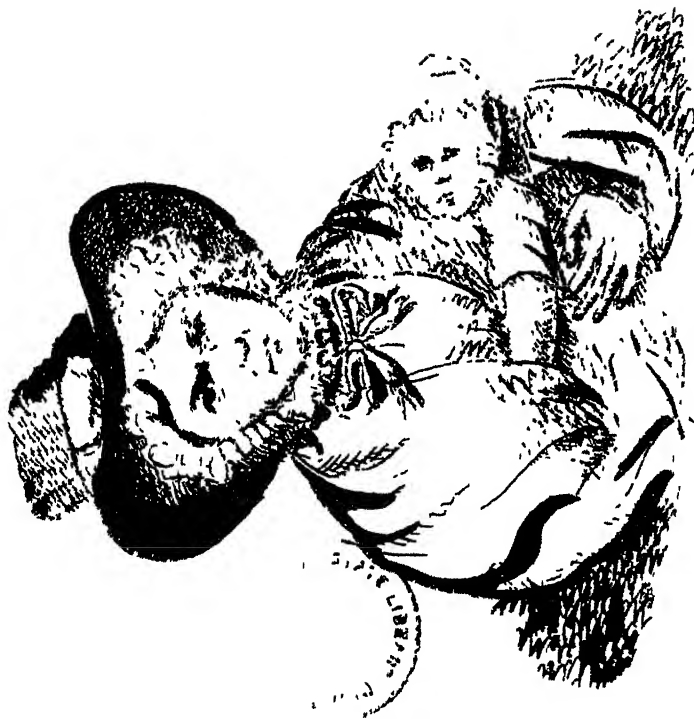
The parties to this historic transaction all in their several ways achieved renown. The buyer was, of course, the brilliant anatomist and successful lecturer, Robert Knox, whose career was to be blighted by the association then begun, his assistants were the youths afterwards eminent in surgery as Sir William Feergusson, Thomas Wharton Jones, and Alexander Miller, the vendors were Burke and Hare

William Burke was born in the parish of Olney, County Tyrone, Ireland, in 1792 His parents were respectable cottagers, and of the Roman faith At the age of nineteen he entered the Donegal Militia, in which his brother Constantine was a non-commissioned officer, and served for seven years as an officer's servant On leaving the army he married at Ballina, County Mayo, a young woman by whom he had several children Owing to a dispute with his father-in-law about a piece of ground, he deserted his wife and family, emigrating to Scotland in 1818 The Union Canal between Edinburgh and Glasgow was then in course of construction, and he got employment as a labourer at the works near Polmont In the village of Maddiston, where he lived, he fell in with Helen Dougal or M'Dougal, a woman of disreputable life, who, having cohabited with a swayer named M'Dougal, by whom she had two children, made no difficulty in transferring her affections to Burke When the canal job was completed the couple went to Peebles; there they settled for a time, and afterwards removed to Leith, where Burke acquired from his landlord the art of cobbling shoes The year 1827 found the pair in Edinburgh, at a low lodging-house called "The Beggars' Hotel" in Portsburgh, kept by a compatriot named Mickey Culzean, making their living by buying, clouting, and hawking old boots and shoes among the poor of the city In the autumn they wrought at the harvesting near Penicuik, and on returning to town first made acquaintance with their future coadjutors, Mr and Mrs. Hare

William Hare, of like age, class, and country with Burke, had also come to Scotland and worked on the Union Canal, being later employed as a labourer at Port Hopetoun There he met a man named Log or Logue, who with his wife, Margaret Land—both were Irish—kept a tramps' lodging-house in Tannér's Close in the West Port, of which Hare became an inmate. For some reason he quarrelled with his landlord and was turned out, but on the death of Log in 1826 he came back to console the widow and succeed to the business This man, whose character was dissolute and abandoned, had been living with a young lodger in the house Though described as Hare's wife, there does not appear to have been any regular ceremony



William Lloyd
Garrison



William Lloyd
Garrison and
his wife

Garrison and his Wife.
From Contemporary Drawings respectively by D. M. Nee and G. A. Tutinor

The Unholy Alliance.

between them, the marriage probably being grounded on habit and repute. This benign provision of the law of Scotland, however, could not operate in M'Dougal's favour, as she then had two husbands still alive. Log's lodgings contained eight beds for lodgers, "they paid 3d each, and two and sometimes three slept in a bed", the customers were of the lowest and poorest class, but, such as it was, it provided a means of livelihood without the drawback of working, and gave the vagabond Hare the status of a landlord. To this agreeable retreat Burke and M'Dougal betook themselves as paying guests. As the den of iniquity has long since been swept away, the following contemporary description may be of interest —

Hare's house is a little further west, in a dirty, low, wretched close called Tanneil's Close, which also opens off the West Port, from which it descends a few steps. It has likewise a back entrance, which communicates with the waste ground behind Burke's.¹⁴ It is a dwelling of more pretension than Burke's, being self-contained and possessing three apartments. It is a one-storey house, and though the interior is liable to be observed by any passer-by from the close, it is not immediately connected with other dwellings. It was, before the trial, completely divested of furniture when occupied, it was fitted up as a lodging for beggars and other wanderers, and "Beds to Let" invited vagrants to enter, frequently to their destruction. The outer apartment is large, and was all round occupied by wretched beds, one room opening from it is also large for such a place, and was furnished in the same manner. So far from any concealment being practised, the door generally stood open, and we have mentioned above that the windows were overlooked by the passengers in the close, but there is a small inner apartment or closet, the window of which looks only upon a pig-stye and dead wall, into which it is asserted they were accustomed to conduct their prey to be murdered. No surprise could have been excited by cries of murder issuing from such a riotous and disorderly house, but it was unlikely that any could reach the ear from the interior den, and even though they had, the house might have borne a fair semblance in front, while the murderous work went on behind. In the inner apartment Burke used to work when a lodger in Hare's, when he did work, which was seldom.¹⁵

The characters of the inmates accorded with their sinister abode. The moral obliquities of the women have been sufficiently indicated. M'Dougal, a Scots Presbyterian, was of a dour and sullen disposition, morosely jealous and gloomily wicked, Mrs. Hare, like her lord an Irish Catholic, was more vivaciously vicious, more actively malign. Of the men, Burke, crafty and cunning, possessed a surface geniality which, combined with plausible, insinuating manners and a touch of religious hypocrisy, was apt to delude the unwary. Despite his innate cruelty he was occasionally visited by some compunction for his crimes, and it is satisfactory to know that, like a more majestic murderer, Macbeth, his nights were full of terror. Hare, on the other hand, was frankly *la bête humaine*, ferocious, violent, quarrelsome, and brutally callous to the consequences of his acts. It is hard to tell which couple played lead in the ensuing drama, but Burke seems to have

¹⁴ Burke afterwards removed, in circumstances to be explained later, to a house of his own in the same neighbourhood.

¹⁵ *West Port Murders*, 1829, pp 122-123.

Burke and Hare.

been the more dangerous, because mentally the abler man, as Mrs Hare was clearly the abler woman. All four were wholly given to drink and the worship of Mammon, their sole regret being the limited opportunities afforded them for the exercise of their devotions.

The physical aspect of the gang has been portrayed by the graphic pen of Professor Wilson (Christopher North), who, like every one else in Edinburgh at the time, was hugely intrigued by the case, and visited the criminals in their respective cells. His description of Burke is as follows—

A neat little man of about five feet five, well proportioned, especially in his legs and thighs—round-bodied, but narrow-chested—arms rather thin—small wrists, and a moderate-sized hand, no mass of muscle anywhere about his limbs or frame, but vigorously necked, with hard forehead and cheek bones, a very active, but not a powerful man, and intended by nature for a dancing master. Indeed, he danced well, excelling in the Irish jig, and when working about Peebles and Innerleithen he was very fond of that recreation. In that neighbourhood he was reckoned a good specimen of the Irish character—not quarrelsome, expert with the spade, and a pleasant enough companion over a jug of toddy. Nothing repulsive about him, to ordinary observers at least, and certainly not deficient in intelligence.

On closer acquaintance, the professor found him—

Impenitent as a snake, remorseless as a tiger. I studied in his cell his hard, cruel eyes, his hardened lips, which with never touched nor moved from their cunning compression, his voice rather soft and calm, but steeped in hypocrisy and deceit, his collected and guarded demeanour, full of danger and guile—all, all betrayed, as he lay in his shackles, the cool, calculating, callous, and unrelenting villain.

Hare was, he says—

The most brutal man ever subjected to my sight, and at first look seemingly an idiot. His dull, dead, blackish eyes, wide apart, one rather higher up than the other, his large, thick, or rather coarse-lipped mouth, his high, broad cheek bones, and sunken cheeks, each of which when he laughed—which he did often—collapsed into a perpendicular hollow, shooting up ghastly from chin to cheek bone—all steeped in a sullenness and squalor not born of the jail, but native to the almost deformed face of the leering miscreant—inspired not fear, for the aspect was scarcely ferocious, but disgust and abhorrence, so utterly loathsome was the whole look of the reptile. Sluggish and inert, but a heavier and more muscular man above than Burke.

Evidences of his combative disposition were noted by Wilson in the scars of wounds from stone or shillelagh which marked his head and brow. The professor does equal justice to the four members of the quaternity:—

Poor, miserable, bony, skinny, scrawny, wizened jades both, without the most distant approach to good-lookingness, either in any part of their form, or any feature of their face, peevish, sulky, savage, and cruel, and evidently familiar from earliest life with all the woe and wretchedness of guilt and pollution, most mean in look, manner, mind, dress, the very dregs of the dregs of prostitution.¹⁶

Of the two, he justly observes, Mrs Hare “had most of the she devil.”

¹⁶ *Blackwood's Magazine*, March, 1829, reprinted in *Noctes Ambrosianae*, XIX.

The Unholy Alliance.

On 29th November, 1827, an old army pensioner named Donald, who had been long unwell, died in the lodging-house in Tanner's Close from causes natural enough in that locality, drink and neglect. His landlord was genuinely grieved, and lest it should be deemed that with a biographer's partiality I am attributing to Hare a sensibility foreign to his character, I hasten to add that there were sound practical reasons for his grief. The old man's quarterly pension was well-nigh due, and he owed his landlord £4. Faced with this bad debt Hare, casting about for some means of recovering it, hit upon the expedient of selling the body to "the doctors," with whose readiness to deal in such wares he, as a citizen, was well acquainted. He communicated the plan to his lodger Burke, because a confederate was required, and from the moment of thatascal's acquiescence the fatal partnership may be said to date. Behind the close was a tanyard from which the alley derived its name, there they procured a bag of tanner's bark, and after the coffin had been nailed down by the parish undertaker and all was ready for the "saules," Hare started the lid with a chisel, removed the corpse, which he hid in the bed, and substituted for it the bag of bark. He then nailed down the lid again, and the poor obsequies were in due course completed. That evening the pair got into touch with the anatomical authorities as we have already seen.

Now, the high price paid by Dr. Knox for the body, and his assistants' cordial remark "that they would be glad to see them again when they had another to dispose of," worked powerfully on the cupidity of the two unscruplants. Here was a royal (and scientific) road to riches—the transmutation of dead-and-done-with flesh into good red gold, but, unfortunately, folks did not die often enough even in so unhealthy a spot as Log's lodging. The point was noted, however, that any ailing inmate might on occasion be converted into cash. Pending this desirable opportunity, they conceived the notion that it was unnecessary to await the co-operation of nature, judiciously assisted, any feeble, friendless wanderer would equally serve their purpose. So the partners began to prowl about the wynds and closes of the Old Town on the outlook for persons with whom the him was likely to do business, but for some time, owing perhaps to the novelty of the pursuit, without success.

The particulars and sequence of the sixteen murders, as acknowledged by Burke and concurred in generally by his colleague, apart from the three charged in the indictment depend upon his two confessions, the one judicially emitted before the Sheriff on the 31d, the other communicated to the *Courant* newspaper on 21st January, 1829.¹⁷ These documents are discrepant as regards dates and details, but in view of the wholesale char-

¹⁷ The full text of these confessions is printed in Appendix I.

Burke and Hare.

acter of the transactions, the brief period—nine months—to which they relate, and the fact that the firm kept no books, such disparities are not surprising. That in the main they give, so far as they go, a true account of the murders, allowing, of course, for Burke's natural desire to implicate his surviving partner, is highly probable. It may be doubted, however, whether the list is exhaustive, popular opinion at the time held strongly that it was incomplete, and that the confessor had, in a double sense, "buked" other subjects. Many recent disappearances among the Edinburgh poor, especially of the class specifically termed "unfortunate," remained a mystery, on which the fate of Mary Paterson and of Peggy Haldane was believed to throw an ominous light. Hare was proud of his mansuety, and is said readily to have made the fullest possible disclosures, but, as it happens, the course adopted by the Crown officials prevented these from reaching the public. His judicial declaration, emitted before the Sheriff on 1st December, 1828, which would in this connection have been invaluable, has disappeared from the archives of the Judiciary Office, and despite the most diligent research I have failed to find its hiding place. "In the information which Hare gave to the Sheriff on the 1st December last," writes Sheriff Duff to the Lord Provost in transmitting Burke's confession for publication " (while he imputed to Burke the active part in those deeds which the latter now assigns to Hare), Hare disclosed nearly the same crimes in point of number, of time, and of the description of persons murdered, which Burke has thus confessed, and in the few particulars in which they differed, no collateral evidence could be obtained calculated to show which of them was in the right."¹⁸ We must therefore make the best we can of Burke.

The substance of the following letter, written on 7th February, 1829, from Shandwick Place by Sir Walter Scott to John Stevenson, one of the publishers of the report of the trial, was embodied in a footnote to the official confession, as printed in Buchanan's edition —

Dear John,—I return the paper [the *Edinburgh Advertiser*, in which the confession was first published]. There is a slip in which Burke's confession differs from that of Hare. They give the same account of the number and the same description of the victims, but they differ in the order of time in which they were committed. Hare stated with great probability that the body of Joseph, the miller, was the second sold (that of the old pensioner being the first), and, of course, he was the first man murdered. Burke, with less likelihood, asserts the first murder to have been that of a female lodger. I am apt to think Hare was right, for there was an additional motive to reconcile them to the deed in the miller's case—the fear that the apprehensions entertained through the fever would discredit [the house], and the consideration that there was, as they might [think], less harm in killing a man who was to die at any rate. It may be worth your reporter's while to know this, for it is a step in the history of the crime. It is not odd that Burke, acted upon as he seems always to [have been] by ardent spirits, and involved in a constant succession of murder, should have misdated the two actions

¹⁸ Appendix I.

The Unholy Alliance.

On the whole, Hare and he, making separate confessions, agree wonderfully — Yours, W Scott 19

For the reasons given by Sir Walter, who plainly had access to Hare's statement, I assume that Joseph the miller was the first victim. This opinion receives further support from the manner of his death, which differs from the ritual observed in all the other cases. One reliable source of information, which might even be regarded as official, strangely enough seems to have been overlooked—Dr Knox's books! The miller was a lodger of Hare's, he fell ill of a fever, which alarmed his host and hostess "in case it should keep away lodgers", so, as he was too weak to make much resistance, Burke and Hare laid a pillow over his face, and held him down till he was suffocated. A porter was employed to carry the corpse to Surgeons' Square, and the episode closes with the usual versicle of Burke's infernal litany—"Sold to Dr Knox for £10"

The second murder, according to the *Courant* confession, was that of another ailing lodger, a nameless Englishman "who used to sell spunks in Edinburgh", he had jaundice and was confined to bed. Him the ruffians slew by what became their stereotyped method—"Hare and the declarant got above him and held him down, and by holding his mouth suffocated him, and disposed of him in the same manner."

On 11th February, 1828, an old beggar woman, Abigail Simpson, left her home in Gilmerton and walked to Edinburgh to collect the weekly pension allowed her by Sir John Hope—eighteenpence and a can of "kitchen fee". Later in the day she was decoyed by the Hares to their den, whisky was produced, and when the supply was exhausted Mrs. Hare bought the old body's can for 1s 6d, the money being laid out in more liquor for the general joy. The old woman's tongue was loosed, she boasted of a fair daughter, "Hare said he was a single man and would marry her, and get all the money amongst them." As the visitor was incapable of motion it was agreed that she should stay the night, that she was allowed to survive it can only be accounted for by her hosts being in a similar condition. In the morning they were sober enough, and plying her with more drink, speedily reduced her to unconsciousness. "Hare clapped his hand on her mouth and nose, and the declarant laid himself across her body"—with the desired result. Next day, having undressed the body and put it in a tea-chest, "they mentioned to Dr Knox's young men that they had another subject, and Mr Miller sent a porter to meet them in the evening at the back of the Castle," to whom they delivered the chest, accompanying him to Surgeons' Square for the blood-money. "Dr Knox approved of its being so fresh, but did not ask any questions."

¹⁹ From the original MS. in the possession of Mr William Cowan, Edinburgh.

Burke and Hare.

One cannot wonder that when these transactions came subsequently to light, public feeling found expression in such bald rhymes as this—

Up the close and down the stair,
But and ben wi' Burke and Hare
Burke's the butcher, Hare's the thief,
Knox the boy that buys the beef

The ease and success attending these operations convinced the partners that they had indeed solved the irksome problem of making a living. All pretence of honest work was now laid aside, the men dressed better, the women, after their kind, indulged in sorry finery, the supply of drink was practically unlimited. To the neighbours they accounted for their flourishing circumstances by alleging the receipt of a legacy, further it was whispered that the men were Resurrectionists—a recognised and lucrative, if disreputable calling. A tariff was established among them, of the £10 regularly received from Dr. Knox, Hare appropriated £6, as out of his share Burke had to account to Mrs. Hare for £1 a head, being a royalty or pole tax exacted by that lady as proprietrix of the shambles.

Two undated murders of nameless victims are mentioned by Burke as occurring in the spring of that year. One was a woman decoyed into the house by Mrs. Hare, "she gave her whisky, and put her to bed three times." When Hare came home to dinner he found the guest in a drunken sleep, and disposed of her "in the same manner as above." Burke says he had no hand in this job, but he admits the murder of another stray woman in circumstances nearly similar, slain by himself alone in the absence of Hare. Both transactions were honourably regarded as for behoof of the firm, and the proceeds were shared accordingly.

On 9th April, 1828, Mary Paterson was murdered, but, owing to the importance of this crime in the series, I propose to deal with it separately.

The next subject obtained was an old cinder gatherer; "Burke thinks her name was Effie." She had been in use to sell to him for his cobbling such scraps of leather as she came across in "raking the buckets." Her Burke inveigled one day into Hare's stable in Tanner's Close, gave her drink, and when she was sufficiently overtaken, he summoned his colleague. "She was then carried to Dr. Knox's, Surgeons' Square, and sold for £10."

Early one morning Burke, sallying forth in quest of prey, saw two policemen dragging a drunk and incapable woman to the West Port Watch-house. His humane feelings were shocked by the roughness of the callous officers; "Let her go," said he, "I know where she lodges and will take her home." So the policemen, glad to be rid of an irksome duty, delivered the poor creature into this good Samaritan's care. That evening, after the prescribed formula at Hare's house, the prisoner, freed from all earthly

The Unholy Alliance.

penalties, lay quiet enough in Surgeons' Square, and her rescuer was the richer by £10, over and above the moral benefit accruing from the performance of a kind action.

If June was perpetrated one of the gang's most cruel crimes, which from information obtained by Leighton we know in greater detail than usual Burke, in the course of his search for subjects, had made up to a frail drunken-looking old man of promising aspect, whom with the lure of a dram he was inducing to accompany him to the fatal house, when they were accosted in the High Street by a hale old Irishwoman, leading by the hand a boy of some twelve years. She had tripped, she said, from Glasgow in hope of meeting in Edinburgh certain friends from whom she looked for assistance, and she asked Burke whether he could help her to find them. The murderer, speedily releasing his inferior prey, told her he knew the whereabouts of the folk she wanted and would take her there. So the trio set out for the West Port, leaving the old man to bewail the loss of his dram. Had he known the price he must pay for it he had been content to go dry for the brief remainder of his days. Arrived at the den the stranger, pending the coming of her friends, was easily persuaded to refresh herself from her benefactor's bottle, with the result that she was soon lying helpless and unconscious on the bed in the little back room, behind the closed door of which the partners concluded their latest stroke of business "in the same way as they did the others." Meantime the boy was left in charge of the women. He was the victim's grandson, and had been dumb from birth, facts which might have moved the pity of any but these human tigers. That night the gang consulted as to what was to be done with him. It was proposed, as he was incapable of speech, to take him out into the streets and "wander" him, but to do so would be to court inquiry which might have awkward consequences, so it was decided that he should follow his relative. Next day, while Hare went out to get something in which to stow the bodies, and the child was becoming restless and frightened at the continued absence of his grandmother, "in that same back room where the grandmother lay, Burke took the boy on his knee, and as he himself expressed it, broke his back. No wonder that he described this scene as the one that lay most heavily upon his heart, and said that he was haunted by the recollection of the piteous expression of the wistful eyes as the victim looked in his face."²⁰ The customary tea-chest being inadequate to contain the double load, the corpses were forced into an old herring barrel, to convey which to Surgeons' Square, Hare's horse and cart were employed. When they reached the Mealmarket in the Cowgate the horse stopped; despite the blows and curses of its ruffian owner the wretched

²⁰ *Court of Cacus*, p. 143

Burke and Hare.

animal could draw the cart no further, a crowd began to gather, so the partners, abandoning both, "got a porter with a huiley" to wheel the bariel the rest of the way. Arriving at Dr Knox's rooms, Burke lifted it in his arms and carried it into safety. "The students had hard work," he says, "to get them [the bodies] out, being so stiff and cold. They [the partners] received £16 for them both." The hapless horse, whose remains were, regrettably, less marketable, was disposed of to a knacker. Burke humanely remarks, "He had two large holes in his shoulder stuffed with cotton, and covered over with a piece of another horse's skin to prevent them being discovered."

In the summer of 1828 Burke and Helen M'Dougal went for a much-needed holiday to Falkirk, with a view to visit the latter's relations—whether one of her redundant husbands or the children she had abandoned to follow Burke, does not appear. The date, 24th June, is fixed by his recollection that it was the anniversary of the battle of Bannockburn. The occasion of the journey is obscure, but it had certain consequences, presently to be noted. Burke states that he was urged by Hare's wife to convert M'Dougal into merchandise, "they could not trust her, as she was a Scotch-woman." "The plan was, that he was to go to the country for a few weeks, and then write to Hare that she had died and was buried, and he was to tell this to deceive the neighbours, but he [Burke] would not agree to it." It may be that Burke compounded for his paramour's life by offering as a vicarious sacrifice a member of her family, such, at any rate, was one result of the visit, and M'Dougal came back from her excursion safe and sound. Another result, however, was less pleasing; the discovery by Burke on his return that Hare had been redeeming the time by doing a little business on his own account, outwith the knowledge of his partner. Taxed with his breach of faith, Hare indignantly denied it, but inquiry at Surgeons' Square satisfied Burke that during his absence Hare had sold the body of a woman for £8. Burke's feelings were justly hurt, perhaps he already resented the inequitable division of the spoil as prescribed by the articles of copartnery, and this may have been the last straw—

Oh, the little more, and how much it is!

Be the fact as it may, there was a violent quarrel, and the parties separated, Burke and his helpmate removing as lodgers to the house of John Brogan, a carter, whose wife was Burke's cousin. This was a single room in the basement of a tenement two closes to the east of Tanner's Close, abutting upon waste ground behind the West Port. It is thus described in a contemporary account:—

In approaching Burke's you enter a respectable-looking *land* from the street, and proceed along a passage and then descend a stair, and turning to the right, a

The Unholy Alliance.

passage leads to the door, which is very near to Connaway's and almost directly opposite to Mrs Law's, a dark passage within the door leads to the room, to this passage the women retreated while the murder was committed. The room is small, and of an oblong form, the miserable bed occupied nearly one end of it (that next the door), so that the women must have almost stepped over the poor old woman while Burke was stifling her, when they went into the passage. For some days after the trial everything remained in the position in which it had been when they were arrested, and presented a disgusting picture of squalid wretchedness, rags and straw, mingled with implements of shoemaking, and old shoes and boots in such quantities as Burke's nominal profession of a cobbler could never account for. A pot full of boiled potatoes was a prominent object. The bed was a coarse wooden frame without posts or curtains, and filled with old straw and rags. At the foot of it and near the wall was the heap of straw under which the woman Campbell's body was concealed. The window looks into a small court, closed in by a wall. At the top of the stair leading down to the room is a back entrance from a piece of waste ground, across which the body was conveyed by M'Culloch. There are several outlets from it.²¹

These particulars have reference to the last murder, that of Miss Campbell or Docherty, for which Burke and M'Dougal were brought to trial, and will be better appreciated when we come to deal with those proceedings.

But, as in the modern instance of the falling out of Gilbert and Sullivan, the charm which they jointly exercised was broken and the tide of success ceased to flow, so the association of Burke and Hare proved equally insoluble. Recognising their ineffectiveness when apart, and that in the death by which they lived they were not to be divided, the partners, pocketing their mutual grievances, agreed to resume practice. Among the first fruits of their reunion is found the case of Ann M'Dougal, a cousin of Helen's last lord, who came from Falkirk on a visit to her Edinburgh kinsfolk, doubtless in pursuance of an invitation given by them on their recent holiday. She was speedily reduced by drink to the requisite insensibility, but the finer feelings of Burke caused a temporary hitch. "Burke told Hare that he would have most to do with her, *as she being a distant friend, he did not like to begin first on her*." So Hare commenced the stifling, and Burke's delicacy in dealing with a relative did not prevent him assisting "the same way as the others." David Paterson, Dr Knox's doorkeeper, of whom we shall hear again, provided a "fine trunk to put her into." "It was the afternoon when she was done," says Burke, and when Broggan came home from his work he remarked upon the new trunk and the absence of the country cousin. A few diams, however, and a payment by each partner of £1 10s, "as he was back in his rent," was accepted as sufficient explanation, but Broggan thought it prudent presently to leave the city. Hare was his cautioner for the £3 rent, and thus induced Burke partly to indemnify him in case he were called upon to pay it; but Broggan, no less astute, went off with the money, "and the rent is not paid yet." Still, it was well spent, for Broggan's

²¹ *West Port Murders*, pp 121-122

Burke and Hare.

suspicious were plainly roused, he might have turned informer, and did not Ann fetch the usual £10 at Surgeons' Square? The circumstances of this murder, by the way, preclude the possibility of Helen M'Dougal's alleged ignorance of the crimes

Before Broggan left, and Burke became the occupier of his house, a charwoman named Mrs Hostler was engaged one day in washing there. The murderers, having made her drunk, suffocated her and hid the body in the coal cellar, pending its removal to Surgeons' Square. Burke records that Dr Knox paid £8 for it. "She had ninepence halfpenny in her hand, which they could scarcely get out of it after she was dead, so firmly was it grasped." He adds that Broggan's wife was not in the house at the time, yet it otherwise appears that she had been but lately confined, and the festive celebration of that event was made the occasion of Mrs Hostler's doom.²² It is hard to believe that the Broggans were not accessory to this crime also.

Even more difficult to "place" than the rest are the murders of Mrs Haldane and her daughter Peggy. Burke names the mother fifth in what the Sheriff well calls the "frightful catalogue", in the *Courant* confession she is denominated the thirteenth victim, her daughter being respectively the eleventh and fourteenth. Further, Burke alleges that the girl was slain by him alone and in the house of Broggan, both which statements, from inquiries later made by Leighton, would seem to be inaccurate.²³

Mary Haldane, who, though she was never married, enjoyed the courtesy style of "Mis," had been long familiar in the streets of Edinburgh as a veteran member of the irregular corps that preys upon society in all great cities. Like most of her class, she was given to drink. Of her three daughters, one was respectably married, another had been transported for fourteen years, and the third had adopted her mother's profession. Mary had been a lodger of Hare's and was well known to the gang. One day Hare saw her standing at a close-mouth in the Gimm-market, in the condition described as "sober, and sorry for it." She was easily persuaded to visit her old acquaintances in Tanner's Close. On the way thither Mary was beset by the gamins of the quarter, who were apt to bait her, but Burke coming up, considerably drove off her tormentors, and the partners escorted Mary to their den, where she was hospitably entreated by the women. When the whisky had done its part, she was introduced into Hare's stable in the lane, and fell asleep among the straw, to wake no more on earth. Next day her remains were duly absorbed

²² *Court of Cass*, p. 180, Macgregor's *History of Burke and Hare*, 1884, p. 73

²³ *Court of Cass*, p. 128; *History of Burke and Hare*, p. 78

The Unholy Alliance.

by the insatiable demands of Surgeons' Square "She had but one tooth in her mouth, and that was a very large one in front," is the epitaph pronounced upon this aged Rahab by her destroyer.

If a day or two Peggy Haldane began to make inquiries for her missing mother. She learned from one Rymer, who kept a grocer's shop at the head of Tanner's Close, and of whom we shall hear more, that Mrs Haldane had been seen to enter Hare's lodgings in company with the landlord. Proceeding in the forenoon to that sinister hostelry, poor Peggy received from the ladies of the house what is termed, ironically, a warm reception. The viragos swore that Mrs Haldane had never darkened their doors, and highly resented the suggestion that such as she should venture to approach the house of "respectable" folk, also they annadverted in no picked phrases on the visitor's own impudence in doing so. Peggy retorted in kind, but the strife of tongues was stilled when the door of the little back room opened and the voice of the master was heard asking what was amiss. A look silenced the angry women; Peggy was civilly invited into the inner apartment to state her grievance, and Hare explained that her mother had indeed been there, but had gone off to Mid-Calder. The inevitable bottle appeared, and with it Burke, to share in the discussion, the door shut upon Peggy Haldane. That afternoon the daughter joined what remained of the mother in Dr Knox's rooms, and the murderers received £8 for her.

The two last crimes of the series, both committed in October, 1828, of which Daft Jamie and Mrs Docherty were respectively the subjects, must, on account of their relative importance, be treated of in greater detail.

"That was the whole of them," says Burke in summing up for the *Courant* the horrid total of his butcheries, "sixteen in whole, nine were murdered in Hare's house, and four in John Broggan's, two in Hare's stable, and one in Burke's brother's house in the Canongate. Burke declares that five of them were murdered in Hare's room that has the iron bolt in the inside of it. Burke did not know the days nor the months the different murders were committed, nor all the names. They [the murderers] were generally in a state of intoxication at those times, and paid little attention to them, but they were all from 12th February till 1st November, 1828, but he thinks Dr Knox will know by the dates of paying him the money for them."

I think so too, though that eminent anatomist did not see his way to give the information.

Burke and Hare.

III.

The Murder of Mary Paterson.

Be dark, bright sun,
And make this mid day night, that thy gilt rays
May not behold a deed will turn their splendour
More sooty than the poets feign their Styx

— 'Tis Pity She's a Whore

The reader has doubtless experienced in a recital of these crimes the monotony of which the "Shepherd" of Christopher North's dialogue complains "First ae drunk auld wife, and then anither drunk auld wife, and then a thurd drunk auld wife, and then a drunk auld or sick man or twa."²¹ The case of Mary Paterson, he allows, "broke in a little on the uniformity," and that story we are now to consider. Here was the first murder charged against Burke in the indictment upon which he was brought to trial, but, as in the circumstances later to be explained, it was not proceeded with, no evidence regarding it was led. We have, however, in the statement of her surviving friend and destined fellow-victim, a unique account of the manner of the crime.²⁵

Mary Paterson or Mitchell (for by both these names was she known) and Janet Brown, girls of about eighteen, though young in years, were old in everything else, having early enrolled themselves among that sorry company whom the French incongruously term daughters of joy. The pair lodged with one Mrs Worthington in Leith Street. Mary was a girl of unusual attractions, famed for the perfection of her form. Her nature was bold and fearless, a native of Edinburgh, she had lost her parents, and there was none to take any interest in what befell her.

On the evening of Tuesday, 8th April, 1828, the unfortunate friends were taken up for some offence connected with their calling, and were detained over-night in the Canongate watch-house. Released early next morning, they betook themselves to the house of a Miss Lawrie, with whom they had formerly lodged in that neighbourhood, she wished them to remain with her, but being restless and feverish after their night's confinement, they presently sallied forth in quest of liquor. Fate led them to the shop of William Swanston, spirit dealer in the Canongate, where they called for and obtained a gill of whisky. While consuming it they noticed Burke, who in company with the publican was drinking rum and bitters.²⁶ Burke was a stranger to the girls, though it is probable

²¹ *Noctes Ambrosianae*, XIX, March, 1829. ²⁵ *West Port Murders*, pp. 121-132.

²⁶ The publication of this statement kindled the wrath of Swanston, who through his law agent threatened an action to vindicate his fair fame. The correspondence ensuing may be read in Ireland's report of the trial. The matter came to nothing.



Mary Paterson.
From an Original Drawing by J. Olyphant

The Murder of Mary Paterson.

that he knew Mary Paterson by sight. Entering into conversation, he "affected to be much taken with them," and three gills of rum and bitters were furnished at his expense. He invited both girls to accompany him to his lodgings, which he said were hard by. Mary was nothing loth, but Janet, whose disposition was less reckless, demurred, whereupon Burke, exerting to the full his signal powers of persuasion, overcame her objections by representing that "he had a pension, and could keep her handsomely and make her comfortable for life." So it was agreed that they should go with him to breakfast, in anticipation whereof he bought from Swanston and presented to his guests a bottle of whiskey apiece.

Mention has been made of Burke's brother, Constantine, who was at this time a scavenger in the employment of the Edinburgh city police, and with his wife and children was living in Gibb's Close in the Canongate. The house consisted of a single room, entrance to which was by a narrow wooden stair and along a dark passage. The place was poorly furnished, a truckle bed and another hung with tattered curtains being the chief contents, some tawdry prints upon the wall embellished the bare interior.²⁷ Such was the apartment to which this wealthy pensioner conducted his fair *protégées*.

Constantine and his spouse were still abed, and the domestic hearth was cold. Burke, after the fashion of a lodger, swore at his relatives for their negligence, for the real relationship of the parties had to be concealed from the visitors, a fire was soon kindled, and a good Scots breakfast—"tea, bread, eggs, and Finnan haddocks"—smoked upon the board, to which the hungry guests did ample justice. The meal over, Constantine left for his day's work. Meanwhile the two bottles of whiskey had been well-nigh drained, Mary Paterson, stupefied with drink, slept as she sat at table, but her companion, who was either more temperate or had the stronger head, was relatively sober. Regarding Mary as now a certain prey, Burke turned his attention to his other prospective victim. Her he induced to go out with him on pretence of taking the air, but the walk ended in an adjacent tavern, where they disposed of pies and porter. Returning to the house in Gibb's Close, they were discussing what was left of the whiskey when the curtains of the bed suddenly parted, and Helen McDougal, who had chanced to call during their absence, burst out upon the revellers, Mrs. Constantine whispering to Brown that this was the gentleman's wife. The virago reviled the girl for attempting to seduce her husband, and fiercely upbraided Burke for his faithless conduct. The torrent of her abuse, clamorous as it was, failed to rouse Mary Paterson, who, lost to all sense of sight or hearing, now lay prone across the truckle

²⁷ (1) K. Sharpe's preface to Buchanan's report of the trial, p. 9

Burke and Hare.

bed Janet, however, apologised for their presence, explaining that they had not known their entertainer to be a married man. The wrath of M'Dougal was then directed solely to her erring master, she became even more violent and abusive, till Burke, losing all patience, threw a heavy diamond glass at her, cutting her severely above the eye. Early in the fracas Mrs Constantine had hurried from the house for the purpose, as appears, of summoning the indispensable Hare. After her departure Burke thrust M'Dougal out into the passage and locked the door. Alone with the girl, he tried to persuade her to lie down upon the bed, which, fortunately for her terror of M'Dougal, who was hammering on the door, prevented her from doing. She insisted on leaving the house, and on her promising to come back when the coast was clear, Burke allowed her to go, escorting her at her request past his indignant lady, "who was still upon the stairhead, apparently much enraged."

It has been supposed that this connubial interlude was what is vulgarly termed a put up job, on the analogy of the fictitious fight between Burke and Hare which preceded the death of Mrs Doherly, but the cases, as we shall find when we come to consider that tragedy, are wholly dissimilar. I take this to have been a genuine instance of *amantium ira*, M'Dougal, with good reason, was jealous of her lord's intent, and while willing enough that he should slay the victims, was determined to restrict his relations with them to that act alone. Be the fact as it may, presently the hideous face of Hare was leering down at the unconscious figure on the bed, and with his co-operation the paramount claims of business were duly satisfied. What further part M'Dougal took in the proceedings, and what became of Mrs Constantine, does not appear, but Mrs Hare, as we shall see, was speedily upon the scene.

When about 10 a.m. Janet Brown, hapless night-bird, hardly escaped out of the fowler's snare, found herself in the street, she made her way to the house of Mrs Lawrie, to whom she related the morning's adventures. To that experienced matron these bore what Mr Sapsea would have called a dark complexion, and she at once dispatched her servant with the inefficient Janet to bring Mary Paterson away. But whether, owing to Burke's hospitality or to her own lack of observation, Janet Brown was at first unable to find the close with the house where she had left her friend, and some time was lost in searching for it before she thought of applying to Swanston, from whom the direction was ultimately got. When, accompanied by the maid, she again reached the house, from which she says she had been absent but twenty minutes, she was met by M'Dougal and the two Hares, business having called the senior partner to Surgeons' Square. Mrs Hare, with characteristic impetuosity, sprang forward to

The Murder of Mary Paterson.

strike her, but was restrained by her more prudent spouse. Janet, stating her errand, was informed that Mary had gone out with Burke, but would soon be back, she was invited to await there her friend's return, and to pass the time the ubiquitous bottle made its due appearance. Janet swallowed both the story and the dram, though she might have known her friend incapable of motion. The silly moth was again approaching the fatal flame; she sat down at the table within a foot or two of the bed on which lay, covered with a sheet, the still warm body of her dead companion, M'Dougal the while, with devilish cunning, railing against her "husband" for his perfidy in going off with the girl, the servant was dismissed, and Hare's eye glared balefully upon the subject of his next transaction. Fortunately for the foolish Janet thus courting her doom, Mrs Lawrie, upon the maid's report, liked the look of matters less than ever, she therefore sent the demented straggler back to Gibb's Close with a peremptory message for Janet to leave at once. Reluctantly the vultures saw their prey escaping, no attempt was made to detain her, but she was invited to return, which she promised to do. Going again that afternoon to the house, she found there only Mrs Constantine, who said that Burke and Mary had not yet come back. Thus, having thrice tempted fate, Janet's marvellous luck brought her safely through these immanent perils.

Though she saw no more of Burke, M'Dougal or the Hares until in the following winter she identified them at the police station, Janet from time to time continued to make inquiries for the missing girl, but without result. Mrs Worthington, Mary's landlady, was equally unsuccessful. Constantine Burke and his wife now alleged that she had gone off to Glasgow with a packman, but though Mary was a girl of education and much attached to her friends, no letter came to relieve their anxiety, and her belongings at the lodgings remained unclaimed. Nothing, in fact, was further heard of her by them, until the clothes which she wore when she vanished were found in the West Port house after the apprehension of the gang. Had the disappearance occurred in more orthodox circles, her friends, of course, would have reported the affair to the police, and the crime would have been detected, but, unfortunately, those interested in Mary's fate were of a class professionally shy of the authorities. So often, however, as the faithful Janet encountered in the street Constantine Burke she asked, greatly to his resentment, for news of Mary Paterson. She reports two of his replies—"How the hell can I tell about you sort of folk? You are here to-day and away to-morrow"; and again, "I am often out upon my lawful business, and how can I answer for all that takes place in my house in my absence?" From the demeanour of the man on

Burke and Hare.

such occasions, and from the conduct of his wife on the day of the disappearance, Janet Brown was satisfied that both Mr and Mrs. Constantine were privy to the deed ²⁸ The complicity of the female members of the band is, upon the facts as stated by Brown, indisputable

How the twenty minutes which elapsed between Janet Brown's leaving the house and her return with Mrs Lawrie's maid were employed by Burke and his colleague is known only from the confessions of the former miscreant The baldness of his account, in the light of Janet's statement, shows how partial and fragmentary are his versions of the several tragedies in which he and his associate played their fiendish parts It appears that it was he who sent Mrs Constantine for Hare to assist in coping with Mary Paterson, and that so soon as his colleague arrived they "disposed of her in the same manner" as in the other cases One hopes that she remained insensible of her doom That afternoon they delivered the body, packed in a tea-chest, at Dr Knox's rooms, and were paid £8 for it "Mr Fergusson²⁹ and a tall lad, who seemed to have known the girl by sight, asked where they had got the body, and the declarant said he had purchased it from an old woman at the back of the Canongate The body was disposed of five or six hours after the girl was killed, and it was cold, but not very stiff, but he does not remember of any remarks being made about the body being warm" Thus the murderer in his official revelation, amplified by him in the *Courant* document as follows — "She had twopence-halfpenny, which she held fast in her hand When they carried the girl Paterson to Knox's, there were a great many boys in the High School Yards, who followed Burke and the man that carried her, crying, 'They are carrying a corpse!' but they got her safe delivered Declares that the girl Paterson was only four hours dead till she was in Knox's dissecting rooms, but she was not dissected at that time, for she was three months in whisky before she was dissected She was warm when Burke cut the hair off her head, and Knox brought a Mr —, a painter, to look at her, she was so handsome a figure, and well shaped in body and limbs One of the students said she was [as] like a girl he had seen in the Canongate as one pea is like another. They desired Burke to cut off her hair; one of the students gave [him] a pair of scissors for that purpose"

The account given by Burke of what occurred at the rooms is, to a certain extent corroborated by David Paterson, Dr Knox's doorkeeper, of whom in another connection there will be more to say This person, who

²⁸ This view is confirmed by Burke's selection of his brother's house as the venue of the intended double murder.

²⁹ One of Knox's assistants, afterwards Sir William Fergusson, Bart., M.D.S., Serjeant-Surgeon to Queen Victoria, and President of the Royal College of Surgeons of England

The Murder of Mary Paterson.

on the exposure of the West Port murders shared in the odium attaching to his principal, published a pamphlet in vindication of his own alleged innocence in his dealings with Burke and Hare ³⁰ This production must be considered later, I merely cite it now in so far as it relates to the case of Mary Paterson "Not being in the room," he writes, "when the body was brought, I found Mr M——³¹ in close conversation with Burke and Hare, and a female subject stretched upon the floor The beautiful symmetry and freshness of the body attracted my attention, soon after I heard Mr F——n,³² another assistant of Dr K——, say that he was acquainted with the deceased, and named her as Mary Mitchell (this was the girl Paterson) My curiosity being roused, I was determined to inquire at the first opportunity where they had got the subject in question, accordingly at their next appearance, which was a few days after—either informing Mr M—— that they had another subject, or requesting payment for the last, but not having heard their general conversation, could not say which—I then took the opportunity of inquiring at Burke where he had procured the last subject, when he answered, that he had purchased it from the friends of the deceased " The only remark David Paterson ever heard made either by the assistants or by the students was, that it was a finely proportioned body, and that she must have been a very handsome girl, "so much so, indeed, that many of the students took sketches of it, one of which is in his [Paterson's] possession " In a subsequent passage, after describing the circumstances of the crime, he states that the price paid for the body was £10, a point upon which his memory was probably refreshed by perusal of his employer's books.

Dr Lonsdale, who himself was one of Dr Knox's students, makes the following interesting reference to the case—"The body of the girl Paterson," he writes, "could not fail to attract attention by its voluptuous form and beauty, students crowded around the table on which she lay, and artists came to study a model worthy of Phidias and the best Greek art Here was publicity beyond the professional walk, nay, more, a pupil of Knox's, who had been in her company only a few nights previously, stood aghast on observing the beautiful Lark stretched in death, and ready for the scalpel of the anatomist. This student eagerly and sympathisingly sought for an explanation of her sudden death, Burke on his next visit was confronted with his questioner in the presence of two gentlemen, and declared that he bought the corpse from an old hag in the Canongate, and that Paterson had killed herself with drink He offered to go and show the

³⁰ *Letter to the Lord Advocate . . . relative to the late Murders, &c.* By The Echo of Surgeon's Square, Edinburgh, 1829

³¹ Alexander Miller. ³² William Fergusson

Burke and Hare.

house if they doubted him. His explanation was feasible, it rested on the whisky tendency of all such women—and Paterson's body smelt of liquor when brought in—their reckless life and exposure, and their frequent abandonment when at death's door"³³ In a footnote to this passage Dr Lonsdale adds—"Knox, wishing for the best illustration of female form and muscular development for his lectures, had Paterson's body put in spirit for a time, so that when he came to treat of the myological division of his course, a further and daily publicity was given to Paterson's remains. Mary Paterson formed the basis of many imaginative stories, and one novel, and that highly sensational, appeared in one of the London penny miscellanies." No copy of this work has rewarded my bibliographical research.

Here, as elsewhere in his instructive volume, Dr Lonsdale is of course mainly concerned with the onerous task of whitewashing the professional reputation of his old chief, in whose impeccability he can perceive no blot. The whole question of Dr Knox's relation to the crimes, however, we shall have in due course to examine. Meanwhile it may be observed that such mere males as might have had some casual knowledge of the dead girl when in life would, naturally enough in the circumstances, hesitate to claim acquaintance with her, while her female associates, whose recognition would have been instant and assured, had no opportunity whatever of seeing her body.

The picture of that pale piece of mortality accompanying the present volume, and curiously reminiscent in its graceful pose of the famous *Reclining Venus* of Velasquez, is reproduced from one of the contemporary drawings referred to in the text.

IV.

The Death of Daft Jamie.

None but a damned murderer could hate him,
He had not seen the back of nineteen years

—*The Spanish Tragedy*.

Not any of the horrid deeds of Burke and Hare aroused in the community of Edinburgh greater sympathy with the victim or a more vehement desire for vengeance on the murderers than did the slaying of James Wilson. The Scottish people have ever regarded with especial tenderness those unhappy beings, called by our custom "innocents," upon whom, though adult, an inscrutable Providence has seen fit to lay the blight of intellectual infancy, and any offence done to such helpless folk was properly deemed a crime as heinous as one wrought against an actual child.

³³ *Life of Robert Knox*, pp 101-102.



DAFT JAMIE.
From an Original Drawing 1828

James Wilson, "Daft Jamie."
From a Contemporary Print.

The Death of Daft Jamie.

James Wilson, familiarly known to the citizens by the derogatory but not unkindly sobriquet of Daft Jamie, was a born natural, in whom, as Scott says of Davie Gellatley, "the simplicity of the fool was mixed with the extravagance of a crazed imagination." His case, like that of Mary Paterson, is a landmark in the bloody progress of Burke's butcheries, forming as it does the second count of the indictment upon which he was brought to trial, though departed from by the prosecutor for the reasons aftermentioned, and as being so far as we can tell the only one in which Burke and Hane attacked a grown man in full health, who had, moreover, not previously been rendered by drink wholly incapable of resistance. It is further remarkable as showing how the murderers, emboldened by the long immunity which attended their dreadful traffic, had the audacity openly to offer for sale the body of a well-known public character, certain to be recognised and presenting unequivocal marks of its identity. The risk of detection, however, as we shall afterwards see, was soon reduced in Surgeons' Square.

An account of James Wilson's brief career—he was but eighteen when he fell a prey to the West Port assassins—was published at the time in a little chapbook, since thrice reprinted, from which the following particulars are drawn ³⁴ He was born of poor parents on 27th November, 1809. His father died when he was twelve years old, and his mother supported herself and her child by hawking smallwares about the city. Wandering off one summer day with some idle boys, Jamie failed to return at nightfall, so his mother, becoming alarmed for his safety, shut up the house and went in search of him. In her absence the truant came home tired and hungry, he burst open the inhospitable door, and in his quest for food pulled down a cupboard with all the household crockery. When his mother, returning, saw the ruin he had wrought she so chastised her peccant offspring with a leathern strap prepared for such occasions that the boy would never afterwards abide with her, but from thenceforth picked up a living in the streets, spending his nights in stairs and doorways, unless some kindly soul offered him shelter ³⁵

Jamie was entirely simple and inoffensive, though physically big and strong for his years, however much he might be tormented by his juvenile associates, he never dreamed of attempting to defend himself, even against the smallest aggressor. "Little boys about the age of five and six," says his biographer, "have frequently been observed by the citizens of Edina going before him holding up their fists, squaring, and saying they would

³⁴ *A Laconic Narrative of the Life and Death of James Wilson*, Edinburgh, 1820.

³⁵ In the indictment upon which Burke was tried Jamie is described as residing in the house of James Downie, porter, Stovenlaw's Close, High Street.

Burke and Hare.

fight him; Jamie stood up like a knotless thread, and said with tears in his eyes that he would not fight, for it was only bad boys who fought, the boys would then give him a blow, and Jamie would run off saying, 'That wisna sare, man, ye canna catch me!'" Often, with the heedless cruelty of youth the children pursued him, calling out his nickname "What way dae ye ca' me daft?" demanded the victim "Because ye ir'" shouted the little savages "I'm no', though," Jamie all earnestly protested, "as sure's death, deil tak' me, I'm no' daft at a'" "Ye ir'" reiterated the demon chorus, and then poor Jamie, in no position further to dispute the argument, shook his impotent fist and fled the field.

Many quaint instances of his simplicity are recorded, as, for example, when a gentleman, meeting him on one of those evil days for which the climate of Edinburgh is justly infamous, took pity on the bareheaded and barefooted lad, and presented him with a hat and shoes, which Jamie, while thanking him kindly for the gift, refused to don, for the reason that "he didna want to wear them in sic hard times as these" He was inordinately fond of snuff, and always carried a brass snuffbox and spoon, the latter having seven holes in it which he called the days of the week the "muckle" one in the middle being Sunday These pitiful relics, rifled from his dead body by Hare after the murder, figured as "productions" in the Crown list appended to Burke's indictment

Jamie was a great hand at asking riddles, but preferred that they should be "given up," when it highly delighted him to answer them himself None of these, though faithfully preserved by his biographer, is of attaching interest, Jamie's sense of humour being as undeveloped as his mind³⁶ He was most regular of a Sunday in attendance at "Mr Aikman's chapel," and joined vigorously in the singing, though indeed his share in the service followed but too literally the injunction of the Psalmist, "Make a cheerful noise unto the God of Jacob," for he uttered no articulate praise

His chief companion was a lad similarly afflicted, known as Bobby Aul, or Auld, and it was the constant aim of the "caddies" and other bad boys of the quarter to set the friends to quarrel Once only did they achieve this amiable purpose, the *casus belli* being a sheep's head to which both lads laid claim Jamie retained the delicacy, together with his pacific reputation, but at the price of a damaged nose On another occasion the pair clubbed their exiguous resources for a gill of whisky at a Grassmarket tavern While Jamie was busy lighting his pipe, his perfidious com-

³⁶ Exception may be made of the following query — Why it was not the custom for ladies to carry Bibles to church? "Because," said Jamie, "they're ashamed o' themsel's, for they canna fin' out the text"

The Death of Daft Jamie.

panion took the liquor, in Fergusson's pithy phrase, "clean cap out," which when Jamie perceived he asked reproachfully, "Hae ye drunk it a', ye daft beast, an' left me nane?" "Ay," replied the unabashed Bobby, "because I was dry"³⁷

But Jamie, though he "liked fine a dram," was by no means given to drink. Once, being what his judicious biographer terms "a little musky," he was admonished by a well-meaning dame who, regrettably for the effect of her remonstrance, was suffering from a black eye "Weel, weel," said the impenitent Jamie, "what I hae in me, you nor nane like ye can tak' out; an' what way hae ye gotten that blue e'e?" The lady, seeing the war thus carried into her own country, hastened to explain that she got it "on the sneck o' the door" the previous night "Ou ay," retorted Jamie, "ye maun tell the best tale ye can, but I ken ye hae been fou' when ye got it, an' by yer imprudent tongue t' yer gudeman, he has ta'en ye through the heckle pins, I saw ye yast'ren whaur ye s'uldna be!" Despite her reforming zeal, his adviser was glad to postpone the good work to a more convenient season.

Such was the being, harmless, simple, and in his own way happy, whom Burke and Hare proposed to add to their sanguinary roll. It is probable that they had long marked him for their prey, though Burke afterwards denied that he had ever seen him before. Of the manner of his death there are two versions one published in the newspapers after the trial, the other in the revelations of Burke. According to the first account, given, it is stated, "upon the foul authority of Hare,"³⁸ one morning in the beginning of October, about nine o'clock, Burke met Daft Jamie in the Grassmarket, looking for his mother. Persuading him that he knew where she was to be found, Burke decoyed him to Hare's house, there, with much difficulty, he was induced to swallow a quantity of spirits, and after a time fell asleep on the floor. Burke was eager to essay the deed, but Hare said that Jamie was still too strong for them, and counselled delay. Burke, however, becoming impatient, threw himself upon the sleeping lad and began to strangle him. Jamie, aroused, shook off his assailant, sprang to his feet, and closed with the murderer to such good purpose that presently Burke was howling to Hare for help. Jamie, who in Hare's words, "fought like a hero," would, "on the same unclean authority, actually have got the better of Burke had he not gone to his partner's aid on Burke "crying that he would stick a knife into

³⁷ In another version of this story Bobby makes Jamie go to the door to see a fictitious dog fight. When asked what he had done to Bobby for his false play, Jamie replied, "Ou, what could ye say to purr Bobby? He's daft, ye ken."—*West Port Murders*, p. 134.

³⁸ *Edinburgh Weekly Chronicle*, 31st December, 1823.

Burke and Hare.

him if he didn't " So Hare " tripped up Jamie's heels " from behind, and as the lad fell to the floor the two ruffians leapt upon him. A dreadful scene ensued, poor Jamie, who was wont to truckle to the smallest urchin, continued with the fury of despair the unequal struggle, and inflicted upon his slayers sundry marks of his strength before finally succumbing to their combined attack. That the malignant sore from which Burke certainly suffered was caused by a bite received from his victim during the fray is, as we shall have occasion to see, a vulgar error.

In Burke's version of the tragedy Mrs Hare played a leading part. She it was who, encountering Jamie in the street and perceiving the possibilities of the case, enticed him to her house. Burke chanced to be having his morning dram in Rymer's shop at the head of Tanner's Close, and saw her, in his own blasphemous phrase, " lead poor Jamie in as a dumb lamb to the slaughter and as a sheep to the shearers " ³⁹ After delivering Jamie into the custody of her lord, Mrs Hare went to Rymer's shop in quest of Burke. " She asked him for a dram, and in drinking it she stamped him on the foot " He knew at once what was wanted of him, and, accompanying her to the house, joined in plying the guest with liquor. But Jamie was in an abstemious mood, Burke " does not think he drank above one glass of whisky all the time " He was then invited to lie down for a rest in the little back room looking out on the blank wall and the pigstye, Hare stretched himself behind him, Burke " sitting at the foreshide of the bed " Mrs Hare discreetly left the house, locking the outer door and pushing the key beneath it. M'Dougal does not seem to have been present. Hare, with his head supported by his arm, lay for some time watching the case, and when he judged Jamie sufficiently sound asleep he threw himself upon him, gripping his mouth and nose. " He made a terrible resistance," says Burke. " Hare and him fell off the bed and struggled, Burke then held his hands and feet; they never quitted their grip till he was dead."

Allowing for the narrator's very natural desire to give full credit to his surviving partner, I think Burke's account of the murder is to be preferred to Hare's. It hangs together better, is more in keeping with what we know of their methods, and has here and there a ring of horrid truth.

When all was over, the body was stripped, the clothes being afterwards given to Constantine Burke's children. Burke mentions, as an item of domestic interest, that " they [the children] were almost naked, and when he untied the bundle they were like to quarrel about them " Hare took from the pockets the snuffbox and spoon, keeping the former

³⁹ An instance of the devil's ability to quote Scripture. Burke used to attend Revivalist meetings in the Grassmarket, and had formed a little library of evangelical works—a quaint hobby for a Roman Catholic murderer.

The Death of Daft Jamie.

himself, and presenting the latter to Burke as a souvenir of the transaction. These relics, as well as the clothes (which must further have perturbed the young Constantines), were afterwards recovered by the Crown and identified as Jamie's property. For some reason unexplained, Burke declined in respect of Daft Jamie to pay the usual royalty to Mrs. Hare, who, incensed by that breach of agreement, "would not speak to him for three weeks."

The deed was done at noon, and later in the day "they carried him to Dr. Knox's in Surgeons' Square, and got £10 for him." Dr. Lonsdale comments upon "the brazen audacity of Burke in offering a town's character to the rooms," which he thinks can only be accounted for by Burke's expressed opinion after his conviction that he might as well be hanged for a sheep as for a lamb.⁴⁰ He has, however, no observation to make upon the equal audacity of Dr. Knox and his assistants in accepting without inquiry so "kenspeckle" a subject, which is hardly to be explained except on the assumption that they were prepared to regard all that came their way as grist for the scientific mill. It is incredible that, apart from the known physical peculiarities of Jamie, his body should have borne no traces of the deadly struggle which ended his life.

Upon this point a remarkable light is thrown by the disclosures of Paterson, the doorkeeper, whom in another connection we have already met. It appears that the body, when unpacked next morning from the tea chest in which it had lain overnight, was at once recognised as that of Daft Jamie by Paterson himself, and by several of the students, but "*Dr. K—— all along persisting that it was not Jamie*, nothing more of consequence occurred until a report that Jamie was amissing reached Surgeons' Square, when the dissection of the body was ordered."⁴¹ The unusual course followed in this instance will be more fully referred to when we come to consider the whole question of Dr. Knox's relation to the crimes, meanwhile it is sufficient here to note the fact that so soon as the hue and cry after the missing lad arose, his remains were promptly rendered impossible of recognition.

Jamie's mother continued vainly to search for him about the city, until the sudden rending of the veil which so long had screened the doings of the West Port murderers afforded a clue to his fate. That fate, as I have said, peculiarly affected the public mind, and many well-meant ballads dealing with it were hawked upon the streets. These broadsheets, though entirely devoid of any metrical or poetic merit, have now a certain historic interest, and are therefore included in the Bibliography of the case, to which the reader is referred.⁴²

⁴⁰ *Life of Robert Knox*, p. 101.

⁴¹ *Letter to the Lord Advocate*, p. 17.

⁴² Appendix IX. (Lamted Edition).

Burke and Hare.

V.

The Last Straw.

I, that should take the weapon in my hand
And buckle thee from ill-intending foes,
Do lead thee with a wicked fraudulent smile,
As unsuspected, to the slaughter house

—*Arden of Feversham*

Practice is proverbially said to make perfect, the firm of Burke and Hare, having traded with such success for nine months, felt that they had established their business connection upon a sound and permanent basis. When their last speculation miscarried and their affairs were in the hands of the public prosecutor, the senior partner piously declared "that it was God's providence that put a stop to their murdering career, or he does not know how far they might have gone with it—even to attack people on the streets, as they were so successful, and always met with a ready market." And he adds that when they delivered the goods "*they were always told to get more*" A contract was now entered into with their scientific patron in Surgeons' Square, by which it was agreed that they were to get £10 in winter and £8 in summer for as many subjects as they could supply. Indeed, that very month of October it was decided greatly to extend the operations of the house. "Hare and him had a plan made up, that Burke and a man were to go to Glasgow or Ireland and try the same there, and to forward them to Hare, and he was to give them to Dr. Knox." According to the popular belief, Paterson, the doorkeeper, was to be the new partner; but ere this hopeful project could be carried further the firm was, in the fullest sense of the term, sequestered, and the shutters were up for good.

On Friday, 31st October, 1828, Burke was taking his morning dram in Rymel's shop when a little old woman came in begging for alms. To his expert eye she presented all the requisites of a subject—she was old, frail, friendless, and so soon as he perceived from her speech that she was Irish, he opened a conversation. The little old woman was garrulous as to her concerns, she had come from Ireland in search of her son, whom she had failed to find, her name was Docherty. Such, by a curious chance, was, it appeared, also that of Burke's mother, they must be related; so professing his high sense of the claims of kinship, Burke invited the wanderer to make his house her own. The little old woman was delighted by her good fortune, she had nothing to offer in return save gratitude, of which she was profuse, and she accompanied her kinsman home, where she was received by the good-hearted M'Dougal with equal cordiality. Leaving the ladies

The Last Straw.

busy preparing breakfast, Burke went in search of Hare. He found that votary of science consuming a gill of whisky in Rymer's shop, and succinctly informed him that he had "got a good shot in the house for the doctor"—"shot" being the technical term employed by these specialists to denominate vendible human flesh—and invited his aid in the necessary preliminaries. Burke then bought in Rymer's the materials for spending a convivial evening—it was Hallowe'en—to be passed in company with the Hares and the newly acquired relative. These guests, owing to the modest scale of his domestic arrangements, would more than fill the room, and for the occasion two lodgers who were then sharing it must be accommodated that night elsewhere. The couple were an ex-soldier, James Gray, and his wife, who with their child had been lodging at Burke's during the week. It was explained to them that in the circumstances their pallet would be required for Mrs. Docherty, and Miss Hare kindly offered them a bed in Tanner's Close. Obviously the firm desired to keep in touch with them, they might be useful in the way of business later. The Grays agreed, and were conducted by Miss Hare herself to her abode.

In the evening the merrymaking began in Burke's room. The host was in excellent voice and joined his venerable guest in singing the ballads of their common country. Visits were paid to the neighbours on the same flat, these were returned, whisky circulated freely, everybody danced, even the little old woman, who in the exuberance of her activity received a hurt to her foot.⁴³ As the evening wore on the general rise in spirits was in inverse ratio to the fall in the supply of liquor. Between ten and eleven o'clock the neighbours—decent folk who had to rise betimes for the day's work—went across the passage home to bed, leaving the party to make a night of it. For some time after they withdrew sounds of mirth and revelry echoed through the basement flat, to which succeeded those of brawling and quarrelling: the voices of Burke and Hare raised in anger, the scuffling noises of a fight—incidents in that festive quarter too frequent to excite remark. Between eleven and twelve o'clock, one Alston, returning by the basement passage to his house on the flat above, heard a woman's voice calling "Murder!" followed by a cry as of a person being strangled, and a noise of some one beating from within upon Burke's door. He went up to the street to look for a policeman, whom failing to find, he returned to the stair, all was then quiet, so he resumed his homeward way.

Next morning, when the Grays came as arranged to breakfast with Burke about nine o'clock, there was no sign of the little old woman. They naturally asked what had become of her, and M'Dougal in foul terms

⁴³ She was barefooted, and in the course of the dance "got a scratch on the foot with the nails in Hare's shoes."—*Evidence of Mrs. Connaway*, Ireland's report of the trial.

Burke and Hare.

replied that the visitor had been "ow'r friendly" with Burke, and that she had in consequence kicked her out of the house. The same account was given to the neighbours, Mesdames Law and Connoway, when they looked in that forenoon to pay their party call. To them Burke explained the nocturnal disturbance caused by his kinswoman's bad behaviour as due to drink, adding, with a significance then lost upon his hearers, that "she was quiet enough now" There was also present a young lad named Broggan, a son of the late tenant of the apartment, who called M'Dougal "aunt," and who, it appeared, had turned up in the course of the night

The meal dispatched, Mrs Gray, unladylike, was indulging in a post-breakfast pipe; she approached the heap of straw at the foot of the bed, which served as the lodger's couch, in quest of her child's stockings, when Burke sharply told her to "keep out of there" Soon after, as she again went towards the bed, beneath which was stored the domestic supply of potatoes, Burke asked angrily "what was she doing there with a lighted pipe?"—he would get the potatoes himself These incidents aroused in the mind of Mrs Gray, who hitherto had enjoyed the freedom of the house, certain suspicions which she determined to set at rest on the first opportunity Burke's conduct, too, became even more peculiar, he threw whisky up to the ceiling, upon the bed and beneath it, and besprinkled his own clothes, giving as the absurd reason that he wished the bottle "toom" so that it could be re-filled

Not until the late afternoon—"about darkening," as she says—was Mrs Gray able to satisfy her curiosity Burke had gone out for more drink, bidding the lad Broggan not to stir from a chair beside the bed until he returned; M'Dougal was reposing on the bed. Presently first one and then the other of Burke's sentinels forsook their post and departed, presumably to hasten the arrival of the liquor, so Mrs Gray and her husband were at last alone She went straight to the forbidden corner, and, lifting up the straw, laid bare the dead body of a woman It was entirely nude, and there were bloodstains on the face, they both instantly recognised it as that of the guest at the Hallowe'en party the night before

Horrified by the discovery, the couple hastily packed their exiguous chattels and hurried from the house In the passage they were met by M'Dougal on her way back Gray questioned her concerning the corpse; and the guilty woman, perceiving that the game was up, dropped on her knees, "imploring that he would not inform of what he had seen." Finding him unmoved by her supplication, she then offered a few shillings "to put him over till Monday," adding "that if they would be quiet, it would be worth £10 a week to them." To which Mrs. Gray indignantly replied, "God forbid that I should be worth money for dead people!" and asked

The Last Straw.

her what she meant by bringing disgrace upon her family by such doings ⁴⁴ "My God, I cannot help it!" exclaimed M'Dougal. "You surely can help it," was the pertinent rejoinder, "or you would not stay in the house." The Grays then left, M'Dougal following them and still endeavouring to effect a compromise. In the street they encountered Mrs Hare, then on her way to Burke's. That strong-minded matron demanded to know "what they were making a noise about", on learning the occasion of the trouble, she proposed an adjournment to a tavern, in order that the matter might be amicably arranged. But the Grays, persisting in their unfriendly attitude, betook themselves to the police station, and the baffled hags slunk back to their den.

Humanity and the cause of justice owe a deep debt of gratitude to Gray and his wife for their incorruptible integrity. Had they succumbed to the bribery of their irregular relative or to the blandishments of Mrs Hare, who knows how long the hideous traffic might have gone on unchecked and unpunished? They were penniless and homeless, and if they had consented to shut their eyes—well, at least they would not have lacked a precedent in more learned quarters. But their virtue was their sole reward. A subscription list was, indeed, opened for their behoof by Buchanan, the publisher of the report of the trial, and was duly advertised in the three Edinburgh newspapers, but with the disappointing result that "not even ten pounds have been collected."⁴⁵ The public was less generous than M'Dougal.

In consequence of Gray's communication, the police, accompanied by him, went about eight o'clock to Burke's house. They found the evil pair in the act of leaving it, and Sergeant Fisher told Burke to go back as he wanted to speak to him. The officer then asked what had become of his lodgers, to which Burke impudently replied, pointing to Gray, "There's one of them," adding that he had turned him and his wife out for bad conduct. Fisher next inquired what had happened to the little old woman who was there the day before. Burke said that she had gone away about seven o'clock that morning (Saturday, 1st November), that Hare had seen her go, and, "in an insolent tone of voice," many others also. The officer then examined the room and asked as to certain marks of blood on the bed, of which M'Dougal, who had now joined them, gave what seemed a natural explanation. She then volunteered the statement that she had seen that

⁴⁴ M'Dougal had borne two children to Mrs Gray's father, so that the parties were in some sort akin.

⁴⁵ Letter to the *Caledonian Mercury*, 15th January, 1820.—James Gray, honest man, died within the year, leaving his family destitute. On 28th September, 1820, his widow wrote to C. K. Sharpe, "as the only friend that I have in this place," intimating his death the day before and begging for aid to bury him.—*MS. in possession of Mr. William Cowan.*

Burke and Hare.

night in the Vennel, near the West Port, the little old woman in the flesh, who had apologised for her misconduct of the previous night. Asked when the woman had left their house, M'Dougal said, at seven o'clock that night (Saturday) "When I found them to vary," says Fisher, "I thought the best way was to take them to the Police Office," which he did ⁴⁶. A stricter search of the premises resulted in the discovery of clothing, afterwards identified as that worn by Mrs Docherty when last seen alive, and of a quantity of fresh blood among the straw.

Early next morning (Sunday, 2nd November) the police, "on information received," visited the rooms of the eminent Dr Knox, No. 10 Surgeons' Square. Paterson, the doorkeeper, produced from the cellar a tea-chest, which he said had been brought to him the night before in the ordinary course of business. It was opened by the police and found to contain the dead body of a woman, which Gray, who was sent for, identified as that of Mrs Docherty. The body was later recognised also by Mrs Connaway, Mrs Law, and others. Instructions were now issued for the apprehension of the Hares. And at 8 a.m. the police arrived in Tanner's Close. The worthy couple were not yet up, but, being informed that Captain Stewart wished to speak to them about a dead body that had been seen in Burke's house, Mrs Hare laughingly said to her lord that the captain surely had very little to do, looking after a drunken spouse, but Hare remarked that, as he had been in Burke's house the night before having a dram with him, and might be blamed, he had better rise and see what was wrong. This conjugal conference was, of course, for behoof of the police in the adjoining chamber. On rising, the pair were arrested, taken to the Police Office, and lodged in separate cells. There the four malefactors were confronted with the corpse of their last victim: they all severally denied that they had ever seen the woman before, either alive or dead.

Next day, Monday, 3rd November, the *Edinburgh Evening Courier* informed its readers of an "Extraordinary Occurrence" during the week-end. The old woman's disappearance, the discovery of her body in the dissecting rooms, and the arrest of the persons implicated, were briefly narrated, and a hint was given of "singular circumstances connected with the case" as pregnant with suspicion. The wildest rumours were at once current in the city regarding supposed discoveries made by the police, and while the authorities were beginning patiently to unravel the bloody and tangled skein of which they now held a clue, the public mind was agitated by all sorts of sensational statements, which, in the absence of authentic

⁴⁶ It appears from the evidence that Fisher at first believed the charge to have arisen out of personal spite on Gray's part, and that if M'Dougal had only held her tongue no arrest would have been made that evening, and the couple could have prosecuted their intended flight.

The Last Straw.

news, took ever more alarming shape. But no popular anticipation of the facts, however frightful, could rival in horror those about to be revealed.

That day the prisoners, examined before Mr Sheriff-Substitute Tait, emitted the usual declarations in relation to the charge against them. What was the precise form of the selected by the Hares we have now no means of knowing, for those wretches being afterwards arrayed in white robes as King's evidence, their old foul raiment was discreetly dropped. They cannot, however, have told a more stupid tale than Burke. He said that on the evening of Friday, 31st October, after he had dismissed the Grays "because he could not support them any longer," a man, whom he never saw before and whose name he did not know, called to have a pair of shoes mended. While he was doing the job, the man remarked that it was a quiet place, and asked if he might leave a box there. Burke consented, and the man went out, returning with a box, which he unloped beside the bed. He made a rustling noise among the straw, but Burke was too intent upon his honest toil to notice what he did. He then paid sixpence for the repairs and went his way. Burke at his leisure examined the box, which he found empty, and saw a dead body under the straw, but whether that of a man or a woman he had not the curiosity to ascertain. Presently the man came back, and on Burke objecting to the nature of his deposit, he agreed to remove it, which was not done until the following (Saturday) night. Burke referred his meeting with Mrs Docherty in Rymer's shop to the morning of Saturday, 1st November. The old woman left his house at 3 p.m. that day; M'Dougal, the female Hare, and Mrs Connaway all witnessed her departure. She never returned. At 6 p.m. the mysterious stranger reappeared accompanied by a porter, "whom the declarant knows by sight, and whose stance is somewhere about the head of the Cowgate or the foot of the Candlemaker Row, and whose Christian name he thinks is John."⁴⁷ The stranger proposed to pay Burke two guineas for his trouble in the matter, and on his mentioning that the body was destined for Surgeons' Square, Burke suggested that David Paterson, "as a person who had some connection with the surgeons," might be consulted. The parties then set out for the rooms, where Paterson paid the stranger "a certain number of pounds," and gave Burke £2 10s. The dead body shown to him at the Police Office had no resemblance to Mrs Docherty, "who is not nearly so tall." Thus the prisoner off his own bat; on being interrogated by the Sheriff, it appeared that the unknown was one William Hare, with whom he admitted some previous acquaintance. He maintained, however, that Mrs. Docherty was not in his house on Friday, that he never set eyes on her till Saturday, and that he had no idea what had become of her.

⁴⁷ John M'Culloch, a Crown witness, the porter commonly employed by Burke and Hare to carry bodies to Surgeons' Square.

Burke and Hare.

The declaration of Helen M'Dougal, while equally false in substance, was less flagrantly defiant of established facts as regards the date of the old woman's visit. She stated that while they were at breakfast on the Friday morning an old woman came in the worse of liquor, asking leave to light her pipe at the fire. As it appeared that she was a relative of Burke's mother, she was hospitably received, and they had a glass all round, "it being the custom of Irish people to observe Hallowe'en in that manner." Later in the day the guest became "very impatient" to leave for St Mary's Wynd to make inquiry for her son, and finally did so about 2 p.m. Mrs. Connaway having complained of the Grays, "because the noise of their quarrelling was so unpleasant to the neighbours," it was arranged that they should be accommodated in Tanner's Close. The Hares spent Hallowe'en night at Burke's, and a good deal of drink was going. Next morning (Saturday) the Grays came back to breakfast. In the afternoon Mrs. Gray, accused of stealing one of M'Dougal's gowns, "raised a disturbance"; then the police came and apprehended Burke and herself. M'Dougal never saw the old woman after 2 p.m. on Friday, and she was not in their house that night. The dead body at the Police Office was not hers: she had dark hair, whereas that of the corpse was grey. M'Dougal knew nothing of a body being concealed in the house until she heard of it after her arrest. She had no conversation with Gray regarding a body, and never offered him money to hold his tongue.

On 10th November Burke and M'Dougal were again examined before the Sheriff, and each emitted a second declaration. Burke now admitted that it was on the Friday, not the Saturday, that the old woman came to his house. She was present at the Hallowe'en party, when every one drank "till they were pretty hearty"; in the course of the night he and Hare "differed, and rose to fight." After the conflict they missed the old woman, who, they found, had crawled among the straw. She was lying against the wall at the foot of the bed, and had ceased to breathe. When they saw that she was dead, Hare proposed to strip the body and sell it to the surgeons. Burke denied that he had seen Paterson about the body on the Friday night. At 5 p.m. on Saturday it was put into a tea-chest and taken by Hare and the porter to Surgeons' Square, Burke going to Paterson's house to advise him of the delivery of the goods. They received £5 from him. Interrogated by the Sheriff, Burke could not say whether the body at the Police Office was the body in question. No harm was done by any one to the old woman, who, in his belief, "was suffocated by laying herself down among the straw in a state of intoxication." Though no violence was offered to her while in life, "a good deal of force was necessary to get the body into the chest, as it was stiff," and some injuries might

The Last Straw.

thus have been caused He declared that young John Broggan knew nothing of the transaction

M'Dougal adhered to her former statement, except that she now declared that, as the old woman became "very troublesome" between three and four o'clock on Friday afternoon, she "thrust her out at the door by the shoulders, and never saw her afterwards" She stated that Burke and Hare had "a slight difference" on the Friday night, "but there was no great noise made, *and no cries of murder so far as she heard*"⁴⁸

The lad Broggan, who had also been apprehended as being concerned in the affair, was presently released, the authorities having satisfied themselves of his innocence The other four prisoners were committed for trial for the murder of Mrs Docherty.

A partial light is thrown upon the course of the inquiry by the following notice which appeared in the *Courant* of 6th November—"The parties in custody, two men and two women (their wives), and a young lad, give a very contradictory account of the manner in which the old woman lost her life One of the men, not Burke, states that it was the lad who struck her in the passage, and killed her"⁴⁹ Burke, however, acknowledges being a party to the disposing of the corpse" After giving Broggan's account of the matter, which we shall hear from himself in the witness-box, the journal proceeds—"The above are the outlines of the statements that have reached us, we must, however, admit that, from the secret manner in which the investigations are conducted, it is impossible to obtain accurate information"

Meanwhile the public was content to know that the murderers had been secured, and the unsheathing of the sword of justice was eagerly awaited.

VI.

Justice.

Do you hear, officers?

You must take special care that you let in

No brachygraphy men to take notes

We cannot have a cause of any fame,

But you must have sourvy pamphlets and lewd ballads

Engender'd of it presently

—*The Devil's Law Case*

The primary task imposed upon the Public Prosecutor was of course the establishment of what in Scots law is termed the *corpus delicti*. the

⁴⁸ M'Dougal's defence, as subsequently developed, was that she herself uttered the cries of "Murder" heard by the witness Alston.

⁴⁹ This statement is the only indication we have of the line taken by Hare before he turned King's evidence.

Burke and Hare.

fact that murder had been done. Unfortunately, by reason of the devilish subtlety of the murderers' methods, the result of the post-mortem examination was much less conclusive than the authorities had hoped. The *Courant*, in the paragraph above quoted, regretfully announced, "The medical gentlemen who examined the body have not reported, so far as we have heard, that death was occasioned by violence. There are several contusions on the body, particularly one on the upper lip, which was swollen and cut, a severe one on the back, one on the scapula, and one or two on the limbs, none of these, however, are of a nature to cause immediate death." The first medical man to see the body was Mr. Alexander Black, surgeon to the Edinburgh City Police. His "own private opinion," as afterwards stated, was that the woman had died from violence; but, "medically," he could give no opinion as to the cause of death. The autopsy was conducted by Dr. Christison, then Professor of Medical Jurisprudence in Edinburgh University, and by Mr. William Newbigging, surgeon in Edinburgh.

In view of the evidence of these gentlemen at the trial, the following account of the matter given in the autobiography of Dr. Christison, as "the chief party in the relative professional investigations," is of interest⁵⁰ —

Mr. Newbigging and I were appointed to conduct the medico-legal inspection of the body. The subject was a woman, about middle age, well nourished and without a trace of disease in any organ. The body presented the signs of death by asphyxia—vague enough in general, and in this instance particularly so, because the method of the murderers left no external local marks. We found, indeed, various immaterial bruises on the limbs, inflicted during life because attended with swelling from extravasated blood, and rather recent because not surrounded by any yellowness. But there were no external marks about the neck or face to indicate how respiration had been obstructed. The neck was loose, the ligaments between two of the vertebrae of the neck were torn asunder, and a little fluid blood was effused beneath the spinal investing sheath and a good deal among the muscles of the neck and back. At this time we knew nothing of the supposed manner of death, and therefore a question arose whether death might not have been occasioned by the head having been forcibly bent upon the breast so as to rupture the spinal ligaments. Express trial, however, proved that such forcible flexure, practised very soon after death, while the blood is fluid and the blood vessels retain contractility, produces the same appearances of extravasation as in the body we had examined. We also found that blows inflicted on the surface in the same circumstances produced livid marks without swelling, owing to the injection of the true skin with blood, but that natural cadaveric livor is confined to so thin a layer of tissue that the cuticle cannot be peeled off without completely removing all discoloration, and that bruises inflicted during life are attended with swelling, and generally with such distinct extravasation of blood as allows of small clots of blood being detected. We therefore came to the conclusion that the injury to the cervical spine had been caused soon after death while the body was warm; that the bruises on the limbs were occasioned not long before death, and might have been caused by blows or kicks, but quite as probably by falls or by

⁵⁰ The professional reader will find an article by Dr. Christison on the medical aspects of the case, in which he gives a detailed account of his experiments on dead bodies in this connection, in the *Edinburgh Medical Journal*, April, 1829, vol. xxxi, pp. 236-250.

Justice.

stumbling against hard objects, that there were no indications of death from any specific natural disease, that every particular appearance we observed was consistent with the idea of death by suffocation, that if death by violence were to be assumed, smothering and not strangling was the manner of it, but that there was no positive proof of death in that way, or indeed in what way death had been caused. This evidence was, of course, insufficient to bear out a charge of murder, though such as to raise the strongest suspicion.⁵¹

Responsibility for bringing the murderers to justice rested with the Lord Advocate, Sir William Rae, of St. Catherine's, Bait, and it will readily be seen that the prosecution was beset by obstacles. In his Answers to the Bill of Advocation for Hare aftermentioned, his lordship plainly states the difficulty of his position. The four prisoners, though repeatedly examined, positively denied all accession to the murder. A month had elapsed since the date of its commission, and after most anxious consideration of the available evidence, including the medical report, the Lord Advocate came to the conclusion that the proof was defective both as to the fact of the murder and as to who was the actual perpetrator. While satisfied on public grounds of the high importance of ensuring a conviction, his lordship did not feel justified in hazarding a trial on evidence which appeared to him inadequate, and the only way in which the information essential to the case could be had was by admitting some of the accused as witnesses against the others. Anxiety to obtain a full disclosure of further similar crimes, the existence of which he had reason to fear, was also a factor in his decision. "The only matter for deliberation," says his lordship, "regarded which of the four should be selected as witnesses. M'Dougal positively refused to give any information. The choice therefore rested between Hare and Burke; and from the information which the respondent [the Lord Advocate] possessed, it appeared to him then, as it does now, that Burke was the principal party, against whom it was the respondent's duty to proceed. Hare was therefore chosen; and his wife was taken because he could not bear evidence against her."⁵² This course having been resolved upon, an overture was made to Hare by authority of the Lord Advocate, with a view to his becoming King's evidence; and the proposal, it goes without saying, was readily accepted.

That his lordship, in the vulgar phrase, made the best of a bad job may be admitted. The risk he would have otherwise run of the whole gang escaping, and that he did not underrate the chariness of Scots juries to convict in capital cases on circumstantial evidence, is apparent from the fact that, despite the infamous testimony of the Hares, the jury found the charge not proven against M'Dougal, while in Burke's case two of their number actually favoured an acquittal!

⁵¹ *The Life of Sir Robert Christison*, i., 306-308.

⁵² Answers to Bill of Advocation for William Hare

Burke and Hare.

But the most important result of the course adopted by the Crown was the consequent disclosures by Hare, and afterwards by Burke, of the full measure of their misdeeds. Had Hare opened not his mouth we should have known nothing of the fate of Mary Paterson and of Daft Jamie. "It was from the facts that Hare so detailed," says the Lord Advocate, "that evidence was obtained from unexceptionable witnesses of such a nature as enabled [his lordship] to bring forward those two murders, as substantive acts, in the same indictment which charged Burke with the murder of Mrs. Docherty." Unfortunately, as has been stated, the revelations of Hare were "burked," and those of his partner came too late to further the ends of justice. It is in the public interest highly regrettable that the procedure taken at the trial prevented proof being led on the two other charges, but of this there will be more to say.

No time was now lost in bringing the matter to an issue. On 1st December Hare told his tale, and on the 6th the public was informed in the Press that Burke and M'Dougal had been committed for trial for the murders of Mary Paterson and Daft Jamie, as well as of Mrs. Docherty. "The manner in which the murders were committed have been described to us," says the *Courant*, "and some statements have also been communicated as to other individuals supposed to have shared a similar fate, but as the whole will probably be laid before the public in the course of the trials that will take place, we decline for the present to publish further particulars."⁵³ Readers of that enterprising journal, however, were to be disappointed in the event. On the 8th the prisoners were served with their indictment, the terms of which will be found in the following report. According to the practice of the time it was of vast length, detailing minutely the circumstances of the crimes charged. Included among the "productions" were the clothes of the three victims and Jamie's snuff-box and spoon, together with a plan of Burke's dwelling, reproduced in the present volume. Annexed to this portentous document was a list of fifty-five witnesses, upon whom the prosecutor relied for proving his case; of these, as we shall see, owing to the course followed, eighteen only were called. Among the thirty-seven, who though cited were not examined, and whose silence caused the keenest regret, are Nos. 44, 46, 47, and 48 of the Crown list: Dr. Knox and his assistants Jones, Fergusson, and Miller.

As the date of the trial, which was fixed for Christmas Eve, drew nigh the intense excitement which had prevailed in Edinburgh since the unmasking of the gang rose to abnormal heights. Every precaution was taken to preserve the public peace and facility of access to those whose duty required their attendance. "The High Constables of the city and its

⁵³ *Edinburgh Evening Courant*, 6th December, 1828.

Justice.

dependencies mustered at six o'clock in the evening, and the police received a temporary reinforcement of 300 men. In order to repress effectually any disturbance, the infantry in the Castle and the cavalry at Piershill were under orders at a moment's notice to march into the city."⁵⁴

Early in the morning of Wednesday, 24th December, 1828, the prisoners were brought from the Calton Jail to the cells below the Justiciary Court-house in the Parliament Close. Long before daybreak the approaches to the Court were besieged by a multitude eager for admission, and by nine o'clock, when the doors were opened, every available inch of space was crowded to suffocation. The Court met at ten o'clock, the presiding judge being the Lord Justice-Clerk (Boyle), with Lords Pitmilny, Meadowbank, and Mackenzie. The Lord Advocate (Rae) and three Advocates-depute (Archibald Alison, Robert Dundas, and Alexander Wood) appeared for the prosecution, the Dean of Faculty (Sir James Moncreiff), Patrick Robertson, Duncan M'Neill, and David Milne, for Burke; Henry Cockburn, Mark Napier, Hugh Bruce, and George Patton, for M'Dougal.⁵⁵ It is a remarkable tribute to the evenhandedness of Scots justice that so brilliant a bar was found gratuitously to represent such "Poor" clients, though no doubt the high importance of the case and the universal interest which it evoked were sufficient to compensate these gentlemen for any pecuniary loss.⁵⁶ Alison and Napier were the future historians respectively of Europe and of Claverhouse, Cockburn was the author of the evergreen *Memorials*, Robertson was the famous "Peter of the Pailinch," the friend of Sir Walter Scott. Many of the counsel engaged later rose to high judicial office: M'Neill became Lord President, Patton Lord Justice-Clerk, others, Lords of Session and of Justiciary.

The "wauflike" appearance of the prisoners at the bar is graphically described by the *Mercury's* reporter.⁵⁷ Neither Burke nor M'Dougal showed any sign of fear, and both followed the proceedings with close attention.

The indictment having been read, counsel for Burke objected to it on the grounds that it charged the prisoner with three unconnected murders, committed at different times and places, and combined his trial with another pannel who was not said to have had anything to do with two of those offences. For M'Dougal it was objected that she was charged with one

⁵⁴ *Edinburgh Evening Courant*, 25th December, 1828.

⁵⁵ Cockburn says "Moncreiff and I were drawn into the case by the junior counsel." — *Memorials of His Time*, Edinburgh, 1856, p. 456.

⁵⁶ *The Edinburgh Weekly Chronicle* did not hesitate to express its doubts on the point, and hinted that fees had in fact been paid, "but by whom we cannot say." This was, however, authoritatively denied.

⁵⁷ See Appendix VII. (Limited Edition).

Burke and Hare.

murder only, and yet was indicted along with another person accused of two other murders in which it was not alleged that she had any concern. After long debate on the relevancy, which may be read at large in the following report, the Court found the indictment relevant, *i e*, correct in form; but were of opinion, in the circumstances of the case, that the charges should be tried separately, and that the Lord Advocate was entitled to select the charge first brought to trial. His lordship having stated that he would proceed with the third charge first, namely, that relating to Mrs Docherty, the Court "remitted the pannels with *that* charge, as found relevant, to the knowledge of an assize." The prisoners then each pleaded not guilty, a jury was empannelled, and the prosecutor adduced his proof.

Now, the course to which the Lord Advocate was thus restricted was most unfortunate for the ends of justice. His lordship afterwards in another connection declared that "he felt it to be his imperative duty not to rest satisfied without having the matter probed to the bottom, and that he should, for the sake of the public interest, have it ascertained what crimes of this revolting description had really been committed, who were concerned in them, whether all the persons engaged in such transactions had been taken into custody, or if other gangs remained, whose practices might continue to endanger human life. Compared with such knowledge, even a conviction for the murder of Docherty appeared immaterial."⁵⁸ Yet that "immaterial" end attained, no light at all was thrown upon the circumstances in which Mary Paterson and Daft Jamie were done to death, and the whole question of the relation of Dr Knox and his assistants to the criminals and their crimes was left untouched. This, as we shall see in the sequel, was strongly resented both by the public and the Press. The case chosen, too, was of the three by far the least interesting and relatively important, and I may be permitted, from the modest standpoint of its historian, to associate myself with the so vehement contemporary regret that to the exclusion of the others it received the preference. Doubtless the Lord Advocate had good reasons for his choice, it was the most recent in date, it embraced both pannels, and, however difficult proof of the *corpus delicti* might be, he was at least furnished with a *corpus vile*. It is curious that of the sixteen murders, the only case in which the doctor and his disciples did *not* see and examine the body should fall to be investigated. So far as the Hares were concerned, his lordship, of course, had a free hand, all charges were alike to them; they were cheerfully willing to swear to anything. But proof of death in the cases of Mary Paterson and Daft Jamie must "medically," as Mr Black would say, have depended on the direct testimony of the specialists from Surgeons' Square.

⁵⁸ Answers to Bill of Advocatation for William Hare.

3 are going on
which have been
tended for the
last 5 years the winter.

4-10-55
Study.
I am very
tired of history

From the Original Drawing by Charles Kunkpatrick Sharpe

From the Original Drawing by Charles Kunkpatrick Sharpe

Justice.

The circumstantial evidence doubtless seemed to his lordship sufficient, or he would not have included these two charges in the libel. Both victims had last been seen, alive and well, in the company of Burke and Hare, by whom their barely cold bodies were presently sold, and in whose possession their clothing was afterwards discovered.

One ponders over the Crown list, wondering what the uncalled witnesses would have had to tell. In Mary Paterson's case the evidence of Janet Brown must have had great weight; Mr. and Mrs. Constantine, too, could probably "a tale unfold." One would like to have heard No. 43, "Elizabeth Main, now or lately servant to the foresaid William Haare or Hare." But it is idle to speculate how the untried charges would have fared upon the proof, they are remitted to the knowledge of a greater Assize, where the Hares will not enjoy the protection of the Court.

As the evidence is reprinted verbatim in the following report from the shorthand writer's notes taken at the trial, it is only needful here briefly to indicate its scope and effect, and to note such facts as emerged upon the proof other than those with which the reader is already familiar.

Mrs. Stewart, with whom Mrs. Docherty had lodged the night before her death, stated that the old woman left her house in the Pleasance early in the morning of Friday, 31st October, she was then in good health, and said she was going to look for her son. On Sunday, 2nd November, witness was shown in the police office a dead body which she at once recognised as that of her late lodger. She also identified certain articles of clothing produced as those worn by the old woman when in life.

William Noble, Rymer's shop-boy, described the meeting of Burke and Mrs. Docherty that morning, and the purchase by Burke during the day of a tea-chest, similar to that produced, which Mrs. Hare later called for and removed.

Mrs. Connaway, whose room adjoined Burke's, remembered seeing him bring home the little old woman, whom in the course of the day she saw in Burke's house and was introduced to by M'Dougal as "a friend of her husband's, a Highland woman." Witness then described the interchange of visits, the merrymaking, dancing, and drinking in which the evening was spent. The stranger seemed much attached to Burke, and most appreciative of his kindness. Between 11 and 12 p.m. witness went to bed, leaving the old woman with Burke, M'Dougal, and the Hares. Soon after she heard a disturbance in Burke's room—"they were fighting like", and in the morning about eight o'clock she heard Hare's voice in the passage. Shortly after 9 a.m. she went "ben" to Burke's, where she found him, M'Dougal, young Broggan, and Mrs. Law. Burke was then throwing the whisky about, and M'Dougal was explaining the disappearance of the stranger, all as before narrated.

Burke and Hare.

Mrs Law, who lived across the passage and had participated in the Hallowe'en rejoicings, gave similar evidence

Hugh Alston described the sounds heard by him outside Burke's door at 11 30 p m on Friday. In cross-examination he stated that the voice crying "Murder!" seemed different from that uttering the strangled cries

A sister of David Paterson, Knox's doorkeeper, said that at 10 p m on Friday, the 31st, Burke called to see her brother, who was out

Paterson himself deposed that, going home to No 26 West Port, at midnight on Friday, he found Burke "rapping at the door". At his request witness accompanied him to his house, where were M'Dougal and the Hares. Burke, pointing to the straw at the foot of the bed, said "he had procured something for the Doctor,"⁵⁰ by which witness understood him to mean a subject. Paterson told him to communicate with Dr Knox direct. Next day, Saturday, 1st November, witness saw Burke and Hare between 12 and 2 p m in Dr Knox's room in conversation with the Doctor and one of his assistants. The Doctor told him that "if they brought any package, he [Paterson] was to take it from them". At 7 p m Burke, Hare, and a porter brought the tea-chest now shown him, it was deposited in the Doctor's cellar, in presence of Mr Jones, the assistant, who then accompanied Paterson to Dr Knox's house at Newington to report, the men and the two women following. Dr Knox gave Paterson £5 for them on account of the price, the balance of which they were to be paid on Monday, when the Doctor should have had opportunity to see that the goods were in order. Paterson divided the money equally between the partners, and left them. At 7 a m on Sunday, the 2nd, the police called for him, he took them to the Doctor's cellar and delivered to them the chest, still roped as he received it. At their request he opened it, and found the untrussed body of a female, "the head was pressed down on the breast for want of room," the face was livid, and blood flowed from the mouth; as "a medical person," he thought the appearances indicated suffocation. In cross-examination, Paterson admitted that he had known Burke and Hare before, they acted "conjunctly," and Dr Knox had often dealt with them for dead, unburied bodies. On his midnight visit to the house on Friday both the men and the women were the worse of drink.

John Boggan stated that he saw the old woman in his "aunt's" house between 4 and 7 p m on the Friday. He then left, returning at 2 a m. on Saturday, when he found the Hares in bed, and Burke and M'Dougal talking together by the window. Presently they all fell asleep. He again went away at 7 that morning and came back at 9, the party was

⁵⁰ "There is something for the doctor (pointing to the straw) which will be ready to morrow morning"—*Evidence of David Paterson*, Ireland's report of the trial

Justice.

then augmented by the Grays. He witnessed the sprinkling of the spirits and heard M'Dougal's account of the old woman's absence. Burke told him to sit on a chair by the bed while he went out for more drink, and not to move till he returned; but Broggan, whose strength was not, as appears, to sit still, again departed, leaving M'Dougal and the Grays in the house.

The next witnesses examined were James Gray and his wife, with whose evidence I have already dealt. The latter stated that in the course of the day the old woman wished to leave the house, but was detained by M'Dougal.

John M'Culloch, the porter, said he was engaged by Burke "to carry something" at 6 p.m. on Saturday, 1st November. He went to the house and helped to cram the body into the tea-chest, "a good deal of pressure was required for putting the lid down." Hare was present. M'Culloch carried the chest to Surgeons' Square, the men and the two women following. He afterwards accompanied them to Newington, where he was paid five shillings for his trouble.

Sergeant-Major Fisher next described the circumstances in which he arrested the prisoners, and his recovery of the body and of the clothes.

One can imagine the thrill of horror and excitement with which the crowded Court heard the Lord Advocate call his next witness—William Hare. That miscreant entered the box with a ghastly smile, and gave his infamous testimony with unblushing effrontery. He knew that his neck was safe. Solemnly adjured by Lord Meadowbank to tell the truth, as whatever share he might have had in that transaction, if he now spoke the truth he could never afterwards be questioned in a Court of justice, Hare was told by the Justice-Clerk that it was only with regard to the death of Mrs. Docherty that he was now to speak. To which he pleasantly rejoined, "T'ould woman, sir?" Having professed himself of the Roman faith, he was sworn on a New Testament with a Cross upon it. In reply to the Lord Advocate, Hare then told the story of his acquaintance with Burke, as already known to us, and how Burke came to him in Rymer's shop on Friday, 31st October, and invited him to go and see "the shot he had got for the doctors," by which he understood him to mean a person to be murdered for scientific purposes. He went accordingly to Burke's house, where he saw Nelly M'Dougal, the old woman, and the Grays. After describing the Hallowe'en party and the visit to Connaway's, he said that between eleven and twelve o'clock that night Burke and he quarrelled and fought. The old woman, who was sitting by the fire, got up to intervene: she did not wish to see Burke abused. She twice ran out into the passage crying "murder" or "police", each time M'Dougal fetched her back. During his struggle with Burke, Hare pushed her over a stool; she was too

Burke and Hare.

drunk to rise. Burke succeeded in throwing him on the bed, and then fell upon the prostrate woman, pressing her down and holding one hand on her nose, the other under her chin. Thus he did for ten or fifteen minutes. He then rose, and "she appeared dead *a wee*." Burke again held his hand upon her mouth for a few minutes until she finally ceased to move. While this was being done witness sat in the chair, looking on. "When they heard the first screech" the two women went out into the passage, and did not return until all was over, and the body stripped and covered with straw. Neither of them made any attempt to save the woman, and when they came back they asked no questions. So soon as the body was concealed Burke went out, returning in about ten minutes with David Paterson, who lived near by, across the street. Paterson declined to inspect the corpse, saying it would do well enough, and telling Burke to get a box to put it into. After he left they all fell asleep. When witness awoke next morning between six and seven he found young Broggan there. Hare was then taken over the disposal of the body, the visit to Newington, and the division of the spoil. He saw Burke arrested that night, and was himself apprehended next morning.

To Henry Cockburn fell the congenial task of cross-examining Hare, than whom no subject more suitable could well be imagined, but enjoying as he did the protection both of the Father of Lies and of the High Court, that fortunate informer by taking refuge in silence was able to baffle his learned opponent. "Have you been connected in supplying the doctors with subjects on other occasions?" was the first question, to which the Lord Advocate promptly objected that it was incompetent to attempt to discredit a witness by investigating his previous life or actions in any other mode than by an extracted conviction for an offence. The witness was removed while the point was argued at great length, and the Court found that the question might be put, but that the witness must be warned that he was not bound to answer so as to incriminate himself. Hare, recalled, said he was never concerned in taking other bodies to any surgeon, but he "saw them doing it." Cockburn then successively asked, how often had he seen them doing it? Was this the first murder that he had been concerned in? Was there murder committed in his house in October last?⁶⁰ all which questions Hare, being duly warned, declined to answer. He admitted that the term "shot," as used by Burke, was a familiar phrase among them, and that he knew before noon on the Friday that the old woman was doomed. He further admitted denying at the Police Office that he had ever seen the body before, but he swore that he had never received

⁶⁰ The date of Daft Jamie's murder in Tanner's Close, as labelled, was between 5th and 26th October, 1828.

Justice.

money from Dr. Knox or his assistants—it was always Burke who did so. The most effective part of the cross-examination was that in which Cockburn dealt with Hare's alleged neutrality at the doing of the deed

The horror of the audience was if possible intensified when Margaret Laird or Hare succeeded her hideous spouse in the witness-box. This truculent and forbidding hag bore in her arms a wretched infant, then in the throes of whooping-cough—one shudders to think what future was in store for the unhappy offspring of such parents. This miserable little creature, as Henry Cockburn later reminded the jury, “seemed at every attack to fire her with intenser anger and impatience, till at last the infant was plainly used merely as an instrument for delaying or evading whatever question it was inconvenient for her to answer.” Having received from the bench a solemn warning similar to that addressed to her lord, Mrs Hare gave substantially the same account of what happened on Hallowe'en. Though separated in the cells the pair before their arrest had manifestly agreed upon their version of the facts. When Burke and Hare began to fight “the old woman cried out ‘Murder!’ She went out to the passage, and came back again, and fell backwards; she got a push, and fell down upon the ground.” Witness could not say by whom the push was given. So soon as Burke attacked the woman, M'Dougal and witness “flew out of the house.” After waiting outside about a quarter of an hour they returned to the room, the old woman had vanished, but witness asked no questions. “I had a supposition that she had been murdered, *I have seen such tricks before*.” In the course of the afternoon M'Dougal mentioned the old woman to her as a “shot” procured by Burke, from which witness, being familiar with the expression, understood she was to be made away with. Mrs Hare admitted that next day at Burke's request she got the tea-chest at Rymer's shop. Asked why, when in the passage, she did not seek assistance from Mrs Connaway and Mrs. Law, witness replied, “The thing had happened two or three times before, and it was not likely I should tell a thing to affect my husband.”

There remains the medical evidence. Mr. Black, from what he saw of the body, declined to hazard an opinion, but from all the circumstances of the case combined, he believed that the woman came by a violent death. He admitted that many cases which he had seen, where death was due to suffocation from drinking, presented the like appearances. Dr. Christison described the result of the post-mortem examination as already stated. All the organs were healthy, there was no sign of natural disease. Such injuries as he found might have been caused by forcing the body into the box. The only appearance which suggested throttling was the ruffling of the cuticle under the chin. From the whole circumstances of the case,

Burke and Hare.

in his judgment death by violence was very probable. In cross-examination he admitted that the appearances were merely suspicious. He would never give an opinion without inquiring into the collateral circumstances.

The Crown case closed with the reading of the prisoners' declarations, no witnesses were called for the defence, and the Lord Advocate addressed the jury. His lordship's speech is well described by Mr J. B. Atlay, in his admirable study of the case,⁶¹ as "moderate in tone, but of deadly cogency." Referring to the popular excitement aroused by the prosecution, while the Lord Advocate felt bound to say that it did not originate in any improper disclosures on the part of the officials entrusted with the investigation, he was fully determined to bring to light and punishment those deeds of darkness which had so deeply affected the public mind. His lordship then examined the evidence in great detail, through which we need not follow him. The cries heard by the witness Alston at 11 30 p.m. on the Friday fixed the exact time when the murder was committed, Paterson's sister proved that at ten o'clock that night Burke was inquiring for her brother, with what object could readily be seen. He called again for Paterson at midnight, immediately after the deed, and taking him to the house said, "There lies a subject for the doctor to-morrow," proving not merely the time of the murder, but the base purpose for which it was perpetrated. Premeditation was further shown by the way in which the Grays were got rid of for the night. The essential points to be proved were (1) that murder had been done, and (2) that it was done by the pannels. The medical evidence, he submitted, left no reasonable doubt as to the cause of death, but if the jury had any hesitation, the evidence of the Hares, who witnessed the crime, was conclusive. Having explained the circumstances in which they came to give their testimony, his lordship said that they had no inducement to tell anything but the truth. At the same time he did not present them as unexceptionable witnesses. It was for the jury to judge the degree of credit to which they were entitled. It appeared to him that Hare spoke the truth and was unshaken by cross-examination. No one could doubt that both men participated in the foul act, and both were art and part guilty of murder, no matter which was the principal executant. All the facts tended to confirm the testimony of the Hares. With regard to M'Dougal's guilt, his lordship held it clearly proved that she knew of Burke's intention, and not only did nothing to prevent it, but assisted by luring and detaining the victim in the fatal den until the deed was done. The real purpose of the women in taking up their position in the passage was to prevent surprise, and to give warning if such were threatened. M'Dougal endeavoured to conceal the crime and to

⁶¹ *Famous Trials of the Century*, London, 1899.

Justice.

protect the murderer, she tried to bribe the Grays to secrecy, offering them £10 a week for their silence. The women followed the body to Surgeons' Square, and went on to Newington to get their share of the spoil. No reasonable doubt could exist as to McDougal's accession to the crime. His lordship concluded by demanding a verdict against both pannels.

At three o'clock in the morning the Dean of Faculty began his speech for Burke, the proceedings having already lasted seventeen hours. The learned Dean complained of the prejudice his client's case had suffered from the common talk, the newspapers, and the handbills which had been so industriously circulated.⁶² Paterson proved that Burke was regularly employed by Dr. Knox to procure and sell dead bodies, and such being the prisoner's trade the mere fact of a corpse found in his house raised no presumption of murder.⁶³ As his employment was infamous and unlawful, he had motives for concealment and for making false explanations apart altogether from the supposition of his having committed murder. Put the case that this woman died by intoxication or by accident, or that she was killed in a fray or on a sudden impulse by Hare, and that Burke was prevailed upon to join in making booty of the subject—did that necessarily infer that he had committed murder? He was not on trial for procuring subjects for anatomists. The clearest thing proved in the case was the irregular habits of all concerned; the Burkes, the Hares, the Grays, and the Connaways were all drinking potent spirits morning, noon, and night. Violent fighting, a complete riot, was going on within the walls of that room where the woman met her death, there was more than the possibility of death by accident. The whole case for the Crown depended entirely on the *socii criminis*, the alleged accomplices in the crime charged. But for the Hares there was no evidence on which the jury could safely convict. If the case could have been made out without them they would have appeared at the bar instead of in the witness box. The medical evidence showed that the death might have been occasioned by intoxication without any violence whatever. In a capital case such as this, suspicion and probability were no grounds for a verdict of guilty, there must be clear legal evidence, leaving no reasonable place for doubt. Yet here the very groundwork of the case, the *corpus delicti* itself, was in the first instance suspicion, and probability in the last. If intention to murder were not presumed, Burke's dealings with Miss Docherty in no way tended to establish guilt. As to his visits to Paterson, with whom he had constant business relations, it was highly unlikely that a man who had just committed a murder would bring a surgeon to look at the body and so expose himself

⁶² See Bibliography, Appendix IX (Limited Edition).

⁶³ Burke afterwards stated that neither he nor Hare was a Resurrectionist.

Burke and Hare.

to instant detection ⁶⁴ It was impossible that Alston could have heard sounds of suffocation in the midst of the noise and riot then taking place M'Dougal's overtures to the Grays were not evidence against Burke, and her anxiety for concealment was as little conclusive of murder as the other circumstances on which the prosecutor relied The whole series of facts was accounted for on the assumption that Burke was merely taking advantage of the circumstances to turn this woman's death into a means of profit Even supposing murder to have been done, there was no evidence that it was the act of Burke rather than of Hare beyond the latter's statement, for making which he had the tremendous motive of saving himself from an ignominious death Were the positions reversed, Burke and M'Dougal could make out as good a case against Hare and his wife If a man's life and liberty were to hang upon the breath of such witnesses, who would be safe? After examining at great length and to excellent effect the discrepancies in their narratives as compared with the testimony of the other witnesses, the Dean maintained that there was no clear legal evidence of Burke's guilt, and that it was impossible for the jury to convict him

Henry Cockburn commenced his address for M'Dougal at five o'clock in the morning Even assuming, said he—though in the face of the admirable speech just delivered, he could not admit—that there was a murder, and that Burke committed it, there was no evidence to convict M'Dougal. By Scots law he held that she and Burke were married,⁶⁵ in any event, she was as much under his influence as a wife could be She was the wife of a professional Resurrectionist dealing with dead bodies, a man with whom no woman could live without seeing many things better imagined than described If violence were used, it was not alleged that she had any hand in it She left the room In the case of a wife what she did was enough to save her from the consequences of murder She it was, and not the old woman or Mrs Hare, whom Alston heard crying "Murder!" and "Police!"⁶⁶ She was in that house because it was her husband's, she was silent because no wife could be expected to betray her husband, she fled in horror, and she raised what alarm she could The false accounts which she afterwards gave of the old woman's departure were explained by her knowledge of her husband's guilty trade, but even had she been aware of murder, such concealment on the part of a wife afforded nothing conclusive against her With regard to her conversation with the Grays, nothing that she said was incompatible with a body, inno-

⁶⁴ Having successfully braved Dr Knox on fifteen previous occasions, what had Burke to fear from his doorkeeper?

⁶⁵ M'Dougal's pre-existent husbands might have modified counsel's opinion upon this point

⁶⁶ This, it will be remembered, M'Dougal had in her declaration expressly denied.

Justice.

cently come by, being found in her house. If she had no accession to the crime it was idle to inquire what she did towards the disposal of the body afterwards. The prosecutor admitted that the Hares were the property of the gibbet. Why, then, was justice robbed of their lives? Because, said the Lord Advocate, their being accepted as witnesses was "a necessary sacrifice." He (counsel) held those witnesses to be so abominable that the necessity of claiming credit for them polluted all the other evidence. The law admitted them, but the jury were the absolute monarchs of their credibility. The only things they swore against M'Dougal were the alleged talk of a "shot" for the doctors, and her not interfering to prevent the crime. Even if true, that did not make her accessory to the murder. The mere knowledge of it beforehand and the concealment of it afterwards were not in law sufficient to convict her. As for Hare, according to his own account, he sat for a quarter of an hour coolly watching that wretched woman expiring under slow and brutal suffering, without raising a hand to help her. His wife acknowledged that she had "seen such tricks before." Questioned as to his accession to similar crimes on other occasions, Hare virtually confessed his guilt by refusing to answer. "A couple of such witnesses, in point of mere external manner and appearance, never did my eyes behold," continued Cockburn. "Hare was a squalid wretch, on whom the habits of his disgusting trade, want, and profligacy, seem to have been long operating in order to produce a monster, whose will as well as his poverty would consent to the perpetration of the dirtiest crimes. The Lord Advocate's back was to the woman, else he would not have professed to have seen nothing revolting in her appearance. I never saw a face in which the lines of profligacy were more distinctly marked." Such witnesses were deserving of no faith, the idea of believing them was shocking, when the result would be conviction in a capital case. The prosecutor talked of their being sworn! "What is perjury to a murderer; the breaking of an oath to him who has broken into the bloody house of life?" In conclusion, Cockburn referred to the prejudice his client had suffered by the notoriety of the case. In an ordinary murder trial no prosecutor would have asked a verdict upon such proof. M'Dougal's danger was the public outcry for a victim. It was the duty of juries to hold the balance the more steadily the higher the storm of prejudice, and their safest course would be to find the libel not proven.

At six o'clock in the morning the Justice-Clerk began his charge to the jury, the weight of which was heavily against both pannels. After reviewing the whole evidence with a minuteness at once exhaustive, and at that hour presumably exhausting, his lordship stated the law as to the admissibility and credibility of the *socii criminis*. In view of subsequent

Burke and Hare.

events it is interesting to note this observation as to the immunity from punishment enjoyed by the Hares. "The public faith has been pledged to these persons, wicked and criminal as they may be and certainly are, and it must at all hazards be kept sacred" Their credibility was another matter, and of that the jury would judge. It was inconceivable if, as was maintained for Burke, Mrs Docherty died a natural death, that the Hares should not only swear away the prisoners' lives, but voluntarily load themselves with guilt by admitting their participation in the crime charged. His lordship dissented from Cockburn's statement of the law as applicable to M'Dougal's position, and directed the jury that if they believed the evidence against her they must find her guilty, art and part, with Burke.

At half-past eight on Christmas morning, Thursday, 25th December, 1828, the jury retired to consider their verdict, and after an absence of fifty minutes they found Burke guilty of the third charge, and the indictment not proven against M'Dougal. Burke, turning to the partner of his iniquities, was the first, and probably the only one to congratulate her on her escape. "Nelly," said he, "you are out of the scrape", and calmly awaited the pronouncement of his own doom.⁶⁷ The Lord Advocate having moved for judgment, Lord Meadowbank, in the fashion of the time, "proposed sentence," in which the other judges concurred, and the Justice-Clerk, assuming the black cap, addressed Burke on the magnitude of his guilt. The only doubt, said his lordship, which the Court entertained was whether his body should not be exhibited in chains, but the sentence was, that he be hanged in the usual way on 28th January next, and his body be publicly dissected and anatomised. "And I trust," continued the judge, "that if it is ever customary to preserve skeletons, yours will be preserved, in order that posterity may keep in remembrance your atrocious crimes." As we have seen, his lordship's suggestion was in the proper quarter accepted, and Burke, with characteristic coolness, continues to affront the generations. The Court then rose, having sat continuously for four and twenty hours.

Of the verdict Cockburn remarks "The evidence against Burke was far too clear to be shaken by even Moncreiff's energy and talent; but the woman, who had been assigned to my care, escaped because there were some material doubts in her favour."⁶⁸ Not every one will be disposed to accept the view of the evidence of her guilt which his ability forced upon

⁶⁷ Sir Archibald Alison, the senior Advocate Depute, recalling this incident, observes—"The thought occurred to me at the moment, 'How many are there among his judges, his jury, or his accusers, who in similar circumstances would have done the same?'"—*Autobiography*, 1883, i. 273. This is more flattering to Burke than to the tribunal.

⁶⁸ *Memorials*, 1856, p. 456.

Justice.

the jury In a footnote Cockburn denies the truth of the statement, afterwards published, that in the course of his address he uttered the aside: "Infernal hag!—the gudgeons swallow it!"⁶⁹

From the accounts given in the journals of the day it appears that the physical atmosphere of the Court-room was as distressing as the moral. "By orders from the Court a large window was thrown open as far as it could be done, and a current of cold damp air beat for twenty-four hours upon the heads of the whole audience. . . . The greater part of the audience being Advocates and Writers to the Signet in their gowns, these were wrapped round their heads, and, intermingled with various coloured handkerchiefs in every shade and form of drapery, which gave to the visages that were enshrouded under them such a grim and grisly aspect as assimilated them to a college of monks or inquisitors, or characters imagined in tales of romance, grouped and contrasted most fantastically with the costume of the bench and the crowded bar engaged in the trial."⁷⁰

VII.

Retribution.

Stand forth, thou monster, murderer of men,
And here, for satisfaction of the world,
Confess thy folly and repent thy fault,
For there's thy place of execution.

—*The Spanish Tragedy*

"This is a bloody cold place you have brought me till!" was Burke's profane comment on his induction to the condemned cell in the Culton Jail. But he soon saw that a more contrite spirit would better advantage him during the brief remainder of his earthly pilgrimage, so professing himself, doubtless with truth, "by no means a bigot in religion," he received with equal impartiality the ministrations of Catholic priests and Presbyterian divines. To the care of these ghostly counsellors he may be left for the present while we see how the world received the tidings of his condemnation.

So great was the run on the Edinburgh newspapers containing reports of the trial that, according to statistics published by the *Courant*, the extra numbers sold amounted to 8000 copies, representing in money taken £210. These, for the times, unexampled figures sufficiently attest the public interest in the case. Joy and relief at Burke's conviction, however, were tempered by deep dissatisfaction at the acquittal of M'Dougal, nothing

⁶⁹ *Quarterly Review*, 1831, vol 44, p 101.

⁷⁰ *Scots Magazine*, Decr. 1828, p. 52.

Burke and Hare.

had come out regarding the two other charges, and the deaths of Mary Paterson and Daft Jamie were still unexplained and unavenged. "Where are the doctors?" was the general cry, equally clamant was the demand for legal vengeance upon Hare. "The conviction of Burke alone," said the *Caledonian Mercury*, "will not satisfy either the law or the country. The unanimous voice of society in regard to Hare is, *Delendus est*, that is to say, if there be evidence to convict him, and we should hope there is. He has been accessory before or after the fact in nearly all of these murders, in the case of poor Jamie he was unquestionably a principal, and his evidence on Wednesday only protects him from being called to account for the murder of Docherty. We trust, therefore, that the Lord Advocate, who has so ably and zealously performed his duty to the country upon this occasion, will bring the 'squalid wretch' to trial, and take every other means in his power to have these atrocities probed and sifted to the bottom." "On the occasion of the trial," said the *Edinburgh Weekly Chronicle*, "had the Lord Advocate been resolved to adopt no ulterior proceedings, he certainly would have adduced his evidence with regard to the whole three charges, in order to satisfy the public that the guilt of all the persons implicated had been sifted to the bran by the Crown officers, and particularly he would have examined Dr. Knox, were it only to 'sear his eyeballs' with the sight of a multitude of his fellow-citizens listening with horror and indignation to the details of his testimony."

With the position of Dr. Knox both before and after the trial, and with the determined but abortive attempts to bring Hare to justice, I propose separately and at length to deal, meanwhile let us follow the fortunes of the remaining members of the gang, so far as these are traceable in the journals of the day.

On the evening of Friday, 26th December, M'Dougal, who for her own safety had been detained by the authorities, was set at liberty. With amazing impudence or stupidity she sought her old lair in the West Port, where for a space she lay concealed. Burke, we read, was then busy praying for her, "that she might repent and atone by a life of quietness, piety, and honest industry." Quietness, as we shall see, was not at her command, and nothing being said about drink, she sallied forth on the Saturday night in quest of liquor. At the tavern to which she resorted she was recognised and her order refused. The rumour of her return quickly spread, a crowd began to gather, and but for the timely appearance of the police upon the scene it had gone hard with Helen M'Dougal. Even as it was, she narrowly escaped lynching at the hands of the infuriated mob, and the police had to use their batons vigorously in covering her retreat to the Watch-house of Wester Portsburgh, which they only effected with the greatest difficulty.

Retribution.

But their anxieties were not yet over, the mob laid siege to the building, smashed the windows, and, like their forbears in the affair of Porteous, set about taking the prison by storm. So threatening did the situation appear that the officials decided at once to get rid of their undesirable charge, whom they hastily dressed in man's clothes and thrust out of the Watch-house by a back window. Having allowed her time to get away they informed the besiegers that M'Dougal was being detained to give evidence against Hare, and the crowd, after much grumbling and disturbance, dispersed. Meanwhile the fugitive repaired to the Lock-up House in Liberton's Wynd, where she was kept till the next day, Sunday, the 28th, when she was "seen safe beyond the toll, on her way to the West Country." In her former Stirlingshire haunts her reception was unmistakably hostile, so she fled back to Edinburgh. On Tuesday, the 30th, she was still lurking about the town, and applied at the Calton Jail for an interview with Burke, which was refused. "She has since made various attempts to discover a resting-place, with a like effect. She has hitherto been recognised wherever she went, and the summary vengeance of the mob exercised upon her. By the latest accounts we find that she has appeared at Newcastle, where again she has been rescued from an infuriated populace by the police officers, who afforded her temporary protection and shelter in the prison. Their sympathy, however, does not appear to extend beyond this, and she was as speedily as convenient escorted by constables to the Blue Stone, the boundary of the counties of Northumberland and Durham, and there transferred to the safe conduct of the functionaries of the latter county, for what purpose further than to get rid of the 'accused thing' does not appear."⁷¹ We also are well and gladly rid of her, for we shall hear no more of Helen M'Dougal. Dr. Lonsdale notes that she is said to have died in Australia in 1868.⁷²

When all hope of prosecuting Hare for the murder of Daft Jamie had been finally abandoned by the Crown, Mrs. Hare was released from prison on 19th January, 1829. On her way up the Bridges to the Old Town she was recognised, and was soon the centre of a hostile crowd. It was a wet, snowy day, and she was pelted unmercifully with snowballs, mud, and stones, had not pity for the child she carried restrained her persecutors, she would likely have fallen a victim to the violence of the mob. But the police made a sally, rescued her from the popular wrath, and conveyed her, safe if not sound, to the Lock-up House in Liberton's Wynd, where she found temporary refuge. After a few days she was again let loose, and, like M'Dougal, betook herself to the West Country. Of how she fared there the newspapers afford us but a partial glimpse. "The celebrated Mrs.

⁷¹ *West Port Murders*, p. 355

⁷² *Life of Robert Knox*, p. 76.

Burke and Hare.

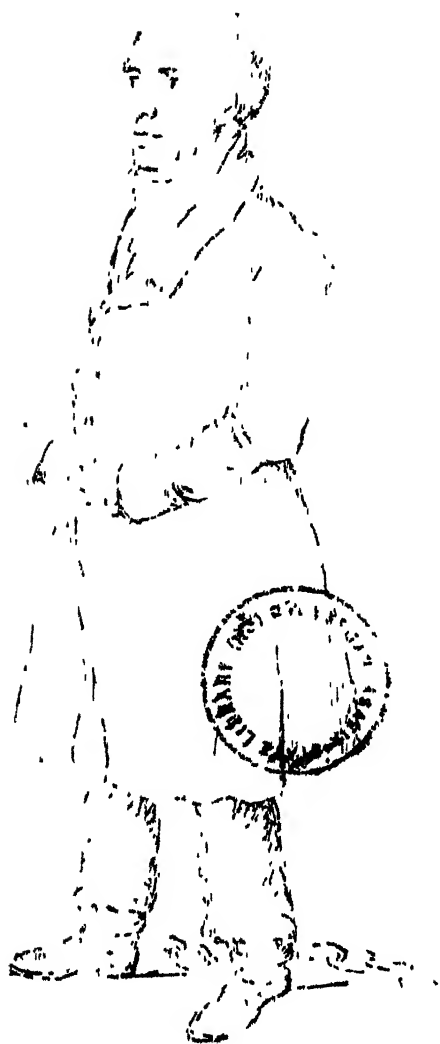
Hare was this afternoon rescued from the hands of an infuriated populace by the [Glasgow] Calton Police, and for protection is confined in one of the cells. She had left Edinburgh jail a fortnight ago with her infant child, and has since been wandering the country *incog*. She states that she has lodged in this neighbourhood four nights with her infant and 'her bit duds,' without those with whom she lodged knowing who she was, and she was in hopes of quitting the vicinity without detection. For this purpose she remained in her lodgings all day, but occasionally early in the morning or at twilight she ventured the length of the Broomielaw, in hopes of finding a vessel ready to sail for Ireland, but she has hitherto been disappointed. She went out this morning with the same object, and when returning, a woman, who she says was drunk, recognised her in Clyde Street, and repeatedly shouted, 'Hare's wife! Burke her!' and threw a large stone at her. A crowd soon gathered, who heaped every indignity upon her, and with her infant child she was pursued into Calton, where she was experiencing very rough treatment when she was rescued by the police. She occasionally burst into tears while deploring her unhappy situation, which she ascribed to Hare's utter profligacy, and said all she wished was to get across the channel, and end her days in some remote spot in her own country in retirement and penitence. The authorities, before releasing her, will probably make arrangements for procuring her a passage to Ireland. An immense crowd surrounded the Calton Police Office this afternoon in expectation of seeing the unhappy woman depart.⁷³ "Hare's wife was sent down from Glasgow to Greenock for the purpose of taking passage to Derry in the steamboat for that port, which is at no great distance from her native place. In consequence, however, of the want of a bundle of clothes, which she could not get away with her from being intercepted by the crowd, she was detained till Thursday, 12th February, about two o'clock, when she sailed in the "Fingal" for Belfast. While in Greenock the police took her under their guardianship, and it was to but a few that she was known to have been in the town till after her departure."⁷⁴ So Mrs. Hare passes out of the story, and Scotland was free at last from her detested presence. What became of her afterwards is unknown. Leighton seeks to identify her with a sexagenarian nursemaid employed in Paris in 1859, but the recognition is not convincing.⁷⁵

Long before these sharers in his guilt were thus called upon to suffer some measure of punishment, Burke, in the condemned cell, was making ready to pay the last penalty of his misdeeds. After the common fashion

⁷³ *Glasgow Chronicle*, 10th February, 1829.

⁷⁴ *Edinburgh Evening Courant*, 14th February, 1829.

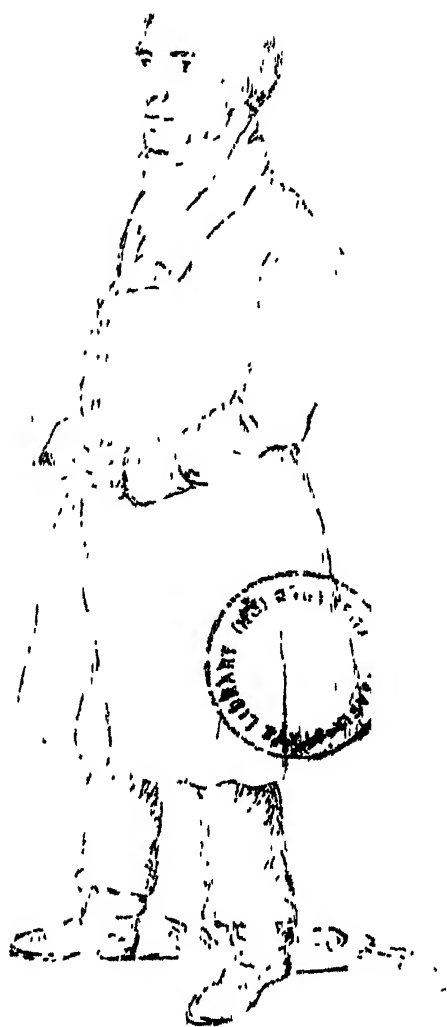
⁷⁵ *Court of Oases*, p. 304.



EDMUND BURKE

Burke in the Condemned Cell

"Drawn from life in the Lock up House on the day before his Execution, by his own consent"
By Benjamin W. Crombie



EDMUND BURKE

Burke in the Condemned Cell.

"Drawn from life in the Lock up House on the day before his Execution, by his own consent"
By Benjamin W. Grombne.

Retribution.

of those convicted of peculiarly brutal and cold-blooded crimes he displayed an edifying piety, and devoted much time to prayer for the conversion of his late associates. As the day of expiation drew near these religious exercises were combined with an anxiety merely mundane. "His mind seemed to one who was sitting by his bed to be occupied by thoughts of eternity, as he lay silent and meditative . . . 'I think,' said he with a start, 'I am entitled, and ought to get that £5 from Dr. Knox which is still unpaid on the body of the woman Docherty.' 'Why?' replied the astonished pietist, 'Dr. Knox lost by the transaction, as the body was taken from him.' 'That was none of my business,' said Burke sharply; 'I delivered the subject, and he ought to have kept it.' 'But you forget,' said the other, 'that were the money paid, Hare would have the right to half of it.' 'I have got a tolerable pair of trousers,' continued Burke musingly, 'and since I am to appear before the public I should like to be respectable. I have not a coat and waistcoat that I can appear in, and if I got the £5 I could buy them.'"⁷⁶

Burke's previous biographers have devoted much space to examining what they call his "spiritual condition" at this time. Into these metaphysical regions I do not propose to follow them, in the case of so sanguinary a ruffian the task were equally nauseous and unprofitable.

On 3rd January Burke, at his own request, made what is known as his "Official" confession, in presence of the Sheriff, the Procurator-Fiscal, and the Sheriff-Clerk, to which on the 22nd he added a short eik or supplement. An Edinburgh lawyer, named Smith, had applied to the Lord Advocate for permission to visit Burke and receive from him an independent statement, and, on this being refused, Mr. Smith appealed to the Home Secretary, but with the like result. Notwithstanding this decision, some one got access to the convict, and obtained a much fuller and more detailed account of his crimes than the official version. This document, subsequently known as the *Courant* confession, was revised by Burke himself and authenticated by his signature on 21st January. Neither of these papers was published until after their author had been publicly disposed of in due course of law. The *Courant* document has a curious history to which I shall return. Having thus set his house in order, the convict was ready to face the final ceremony with a quiet mind.

At 4 a.m. on Tuesday, 27th January, 1829, Burke was taken in a coach from the Calton Jail to the Lock-up House in Liberton's Wynd, at the head of which he was next day to suffer, the precaution being necessary by reason of the excitement in the city. That night the scaffold was erected—you may yet see the site, marked by two reversed sets in the paving of

⁷⁶ *Court of Cassis*, pp. 255-256

Burke and Hare.

the street, at the north-west corner of the County Buildings in the High Street, hard by the old well which remains one of the few contemporary features of the scene. Although the weather was very wet and stormy, the operations of the workmen were watched by a vast multitude, who marked their appreciation of the conclusion of the job at midnight by three tremendous cheers, which were heard even in Princes Street. Long before daybreak, though the rain still fell in torrents, people began to assemble for the great event, and by 8 a.m. on Wednesday, 28th January, the largest crowd of spectators—estimated at between 20,000 and 25,000—ever collected in the streets of Edinburgh thronged the spacious area of the Lawnmarket and its approaches. Each window in the towering *lands*, which reared their then unbroken fronts on either side of the historic plaza, had been long before “bespoke” at prices ranging from 5s to 20s, according to the facilities afforded for viewing the last agonies of the criminal. All fashionable Edinburgh had a seat, Charles Kirkpatrick Sharpe among the number, and it is probable that he was accompanied by the author of *Waverley*, though the latter makes no mention of the fact in his journal. Among Sharpe’s MS. collections is an interesting letter from Sir Walter’s daughter Anne, written to Sharpe from Abbotsford on 28th December, 1828, which, as it has not before been published, may prove acceptable —

My dear Sir,—You were so good as to give me a most entertaining account of your gaieties during the race week, and I hope you will not think me very troublesome should I ask you to tell me something of these delightful horrors in Edinburgh. Papa tells me you were to be at the trial, and he is much inclined to share a window with you on the day Mr Burke is hanged. I wish much to know if Mr Hare is the man who played so melodiously on the flute with one hand, and will Mrs. Burke share the same fate as her husband? I hope you have no more houses in the Old Town to let, as I fear tenants will be scarce, though I think your houses were not in the West Port. We have no news here, except that our next neighbour shot a man the other night, thinking him a robber or a doctor. We have been living very quietly here, but expect many friends to-morrow, who remain during the holidays. I wish much you were one of them, but I don’t despair some very fine summer day you may be tempted to come here, and I need not, I am sure, say how much pleasure it would give papa and myself to see you here. Will you remember me kindly to Mrs Sharpe and your sister, and ever believe me, my dear Mr Sharpe, with much esteem to remain,

Yours very sincerely,

ANNE SCOTT

Abbotsford, Sunday evening 77

Sharpe, I believe, always declined to visit Scott’s *paupera regna*, of the founding of which he disapproved.

That Sir Walter carried out his intention of attending Burke’s execution appears from a letter addressed to Sharpe by Robert Seton, an Edinburgh

⁷⁷ From the original MS. in the possession of Mr. William Cowan.

Retribution.

bookbinder, dated from No 423 Lawnmarket on 14th January, 1829, in which the writer says—

Mr Stevenson, bookseller [one of the publishers of the report of the trial edited by Sharpe], wished one window for Sir Walter Scott and yourself but on account of the number that had applied, that will be out of my power But I shall be happy to accomodate [sic] Sir Walter and yourself with a share of one ⁷⁸

A contemporary account of the final ceremony, upon which it is unnecessary here to dwell, is printed in the Appendix for the satisfaction of the curious ⁷⁸ At 8 15 a.m., in pursuance of his sentence, amid the execrations of that great multitude of his fellow-creatures, the murderer yielded up the ghost. His body, after hanging for an hour, was cut down and removed by the authorities, the crowd about the scaffold scrambling for fragments of the rope.

That the fullest measure of poetic justice attended Burke's dissolution must be admitted he died, as did his sixteen victims, by strangling or suffocation, and his remains, like their's, became a "subject" for the advancement of science under the anatomist's knife "Burke the murderer hanged this morning," briefly records Sir Walter in his diary "The mob, which was immense, demanded Knox and Hare, but, though greedy for more victims, received with shouts the solitary wretch who found his way to the gallows out of five or six who seem not less guilty than he. But the story begins to be stale, although I believe a doggerel ballad upon it would be popular, how brutal soever the wit" ⁷⁹ As will be seen from the Bibliography, the public taste in this respect was amply catered for, Burke met the fate deprecated by Graculo in *The Bondman* he was "twice executed"—

At the gallows first, and after in a ballad
Sung to some villainous tune

Early on Thursday morning Burke's body was taken from the Lock-up House, where it had lain overnight, to Professor Monro's rooms in the College, certain privileged persons being given a private view before the opening of the class—Liston, the surgeon; George Combe, the phrenologist; Sir William Hamilton, the philosopher; and Joseph, the sculptor (who "took a lust" of the exhibit), among the number. At one o'clock the body, in terms of the sentence, was publicly dissected by Monro, who lectured on the murderer's brain.⁸⁰ The precincts of the College were besieged, but only students and a few "representative citizens" to whom

⁷⁸ From the original MS. in the possession of Mrs. Reid of Lauriston Castle.

⁷⁹ See Appendix II

⁸⁰ *The Journal of Sir Walter Scott*, 1800, II., 225

⁸¹ Casts of Burke's head and of the interior of his skull are preserved in the Anatomical Museum of Edinburgh University

Burke and Hare.

tickets had been issued obtained admittance. The professor lectured for two hours without exhausting either his subject or his audience. Great numbers of students who had failed to get entry thronged the quadrangle, demanding to see the body, and such was the uproar that the magistrates sent for the police. These guardians of the peace, exercising their functions with a ferocity characteristic of the times, were speedily engaged in fierce conflict with the students, the Lord Provost and the College Bailie appeared in the field, but were driven off with ignominy, and the riot continued until four o'clock, when Professor Christison intervened and order was restored on the footing that, by his mediation, the students were to be admitted in batches of fifties, he giving his personal guarantee for their good behaviour. The incident curiously anticipates what happened at the College nine years later in the memorable Snowball Riot of January, 1838. Professor Christison has recorded his experiences in both engagements.⁸¹

On Friday arrangements were made for what Leighton terms "a grand public exhibition," which he attended and has described.⁸² The body was placed on the black marble slab of the anatomical theatre, visitors entering by one door and passing out by another. All day long, from ten o'clock till dusk, a continuous stream of sightseers flowed through the chamber, at the rate, as was calculated, of sixty per minute, giving a total of 30,000 persons. Even this did not exhaust the popularity of the show, next day huge crowds awaited a renewal of the horrid spectacle, but the College authorities decided not to repeat the entertainment. "The corpse of the murderer Burke," writes Sir Walter on 31st January, "is now lying in state at the College, in the anatomical class, and all the world flock to see him. Who is he that says that we are not ill to please in our objects of curiosity? The strange means by which the wretch made money are scarce more disgusting than the eager curiosity with which the public have lucked up all the carion details of this business."⁸³

After this exhibition Burke was further dissected, salted, and with peculiar propriety put into barrels for the purpose of future lectures. His skin was tanned—I who write have an authentic specimen of it, resembling in colour and texture a piece of an old brown leather strap. But the scientists were not yet done with him. A battle royal was waged, literally over his head, between the forces of phrenology, commanded by Combe, and their metaphysical opponents, generalised by Sir William Hamilton, the result of which may be found in the pamphlets enumerated in the bibliography. So hardly did Burke's "bumps" fit the Combean theory that his last work

⁸¹ *Life of Sir Robert Christison*, ii, 71-74.

⁸² *Court of Oculis*, pp. 275-279.

⁸³ *Journal*, ii, 227.

Retribution.

may be called a triumph of "destructiveness", he ended by burking phrenology!

When the hunt after Hare was given up as hopeless the Lord Advocate, in fulfilment of his pledge to satisfy so far as possible the public curiosity, transmitted to the Lord Provost for publication the official confessions, which were printed accordingly in the Edinburgh newspapers of 7th February. The course of the *Courant* confession in coming to light was more chequered. On 26th January that ingenious journal announced that on the 29th, the day after the execution, Burke's confession would appear in its columns. Hare's case was then pending before the High Court of Justiciary, and Duncan M'Neill, his counsel, at once applied for interdict, which was granted. On the 29th the *Courant* expressed regret for disappointing its readers, and promised to publish the confession so soon as was legally permissible. On 5th February, Hare being finally set free, and the interdict expired, the confession would have been published but for a fresh interdict, granted by the Sheriff at the instance of Mr J. Smith, S.S.C.—the gentleman whose application to interview Burke had been refused—upon the allegation that the document in the *Courant's* possession was intended by Burke for him, and had been disposed of to the editor by a warder to whom it was entrusted for delivery. Mr Smith produced a statement signed by Burke the night before the execution, authorising him "to insist upon the delivery of the paper from the *Courant*". The announcement that the official confessions were about to be published, however, quickly brought the parties to reason. If the official document got the start of the *Courant's*, the value of the latter as copy would be largely discounted. So the dispute was somehow settled, the interdict withdrawn, and both confessions appeared amicably together on 7th February, as already stated. The *Courant* was rather sore about these legal obstacles, which the editor regarded as "vexatious"; but took comfort in the marked superiority of its disclosures to those of the rival revelation.

VIII.

The Immunity of Hare.

| | |
|--|-------------------------------|
| <i>Gasparo</i> | Wiser than these, |
| You have acted certain murders here in Rome, | |
| Bloody and full of horror | |
| <i>Lodovico</i> | 'Twas, they were flea-bitings |
| Why took they not my head, then? | |

—*The White Devil.*

Ever since the trial of Burke and M'Dougal, Hare and his helpmate had been kept in close custody upon a warrant of the Sheriff, while the

Burke and Hare.

Lord Advocate was making up his official mind what to do with them. No doubt that gentleman in his private capacity would gladly have had them hanged out of hand, but as the Public Prosecutor, like Lord Fleetwood in another connection, his lordship was, as we shall see, "the prisoner of his word." To the public and to the newspapers the situation presented no difficulty. Hare had been examined in Court in regard to one charge only, he could, of course, be brought to trial on the two other charges, as to which when in the witness-box he had given no evidence. But the Lord Advocate had the misfortune to differ from the learned editor of the *Mercury* in his opinion of the law, and after most careful consideration his lordship came reluctantly to the conclusion that, in view of the assurance of immunity given by his authority to Hare, he was legally barred from prosecuting either of the persons concerned.

When this decision became known, together with the report that Hare was about to be released, the popular indignation was roused to the highest pitch. The belief was very general that of the two culprits Hare was the greater villain, and that to the sixteen victims for whose deaths he and Burke were jointly responsible Hare had added to his own account that of his less astute confederate. It was further alleged, upon what grounds does not appear, that not only was Hare the chief actor in those scenes of blood, but that he conceived the original idea of the murders, and was throughout the tutor and instigator of his convicted accomplice, whom he had successfully cheated to the end. The public journals did their best to foster this rancorous feeling and incidentally to increase their circulation; the Lord Advocate was called upon to redeem his pledge "that he would probe the matter to the bottom", and his lordship was even charged with impeding the course of justice by permitting Hare to escape punishment. Finally, when all hope of forcing the Crown into action had faded, a movement was set on foot to institute a private criminal prosecution against Hare for the murder of Daft Jamie—the most popular of the victims—at the instance of his mother and sister. For this purpose subscriptions were invited, and the necessary funds being quickly raised, the case was entrusted to George Munro, S S C, as agent, Francis Jeffrey was retained as counsel, and things began to look serious for Mr. Hare, then leading a life of leisure in the Calton Jail.

To the demeanour of this miscreant, both at the trial and in prison, was largely due the public animus against him. He gave his evidence, as we have seen, with shocking levity, and after the verdict capered in malevolent glee at Burke's doom and his own escape. "The man, instead of thinking he had done anything shameful or even wrong, was rather proud of his ingenuity, not only amusing himself in the public ground attached

The Immunity of Hare.

to the ward, but exhibiting rather satisfaction at being looked at. Nor, while in the very height of his effrontery, did he construe the marked dislike of the prisoners, every one of whom shrank from his touch or even approach, into anything short of spite because he was now free—being only there as under the protection of the authorities—and his companions poor bond devils”⁸⁴ Hare’s type, it must regretfully be admitted, was not a lovable one, little wonder that the voice of the people clamoured for his blood

As the first step towards the fulfilment of this “felt want,” a petition was presented on 16th January to the Sheriff by the private prosecutors, Mrs and Miss Wilson, charging Hare with the murder of James Wilson, their son and brother, upon which he was examined and committed to prison, and a “precognition” or examination of witnesses was ordered. On the 20th Hare applied to the Sheriff by a petition praying that the warrant be recalled, himself set at liberty, and the precognition stopped. Jeffrey for the Wilsons and Duncan M’Neill for Hare having been heard, on the 21st the Sheriff, “in respect that there is no decision finding that the right of the private party to prosecute is barred by any guarantee or promise of indemnity given by the public prosecutor,” refused the petition, but in view of the novelty of the point superseded further proceedings so as to enable Hare to apply to the Court of Justiciary. Hare’s advisers accordingly presented to the High Court a Bill of Advocation, Suspension, and Liberation,⁸⁵ setting forth at great length the circumstances of his case, his full and “true” disclosure on judicial examination of what he knew relating to the alleged murders, of which that of James Wilson was one, under assurance by the Public Prosecutor of personal and individual protection; his evidence given at the trial, on assurance from the bench that he himself was fully protected against trial or punishment for any of the charges contained in the indictment, and his contention that the present proceedings against him were incompetent, irregular, oppressive, and illegal, and that he was entitled to immediate liberation. On 23rd January the Court ordered intimation of the bill to the private prosecutors, and appointed parties to be heard by their counsel on the 26th. On the same day Hare petitioned the Sheriff to be released from close confinement and to be allowed communication with his counsel and agent, which was granted. After hearing counsel on the 26th, the Court ordered intimation of the bill to the Lord Advocate, so that his lordship might make such answer and give such information as in the circumstances should seem to him necessary and proper, and ordained parties to lodge printed informations upon the subject-matter of the bill and the debate had thereon that day.

⁸⁴ *Court of Cacus*, pp. 284 285

⁸⁵ See Appendix VI. (Limited Edition).

Burke and Hare.

The answers for the Lord Advocate to the bill,⁸⁶ apart from the importance of the legal principle involved, are interesting as lifting for the first time the veil which till then had screened the difficulties that attended the prosecution of the murderers. How great these were and in what manner his lordship dealt with them we already have had occasion to know. With regard to the protection promised to Hare the Lord Advocate explained—

This assurance had no reference to one case more than another. It was intended for the purpose of receiving the whole information which Hare could give, in order that the respondent might put Burke and all others concerned on trial for all the charges which might be substantiated. In giving it the respondent acted under the impression and on the understanding that when offences are to be brought to light in the course of a criminal investigation carried on at the public instance, such assurance altogether excluded trial at the instance of any private party. In its nature this assurance was thus of an unqualified description, and was calculated to lead the party to believe that the possibility of future trial or punishment was thereby entirely excluded. The assurance was so meant to be understood.

The warrant of imprisonment against the Hares had been withdrawn because, after the most anxious inquiry, no crime could be discovered in which Hare was concerned other than those to which his disclosures under assurance related. Finally, his lordship strongly held that any attempt on his part to prosecute Hare would be in itself dishonourable, unworthy of his high office, and most injurious to the administration of justice.

The informations for the parties, which are reprinted in full in the Appendix to the limited edition of the present volume, embodied the substance of the oral pleadings.⁸⁷ That for Hare began by a general statement of the facts, and proceeded to set forth at length the legal grounds on which the application rested. Four points were conceded in argument—(1) by Scots law a *socius criminis*, examined as a witness in a criminal trial at the instance of the Public Prosecutor, and answering the questions put to him, cannot himself be tried for the offence as to which he has been examined, (2) this state of the law is not of ancient usage, and is not due to any statutory enactment, (3) such protection extends only to witnesses called by the Public Prosecutor, and (4) the law of England gives no such absolute protection, but only a claim for a Royal pardon. It was argued that the right of the community for the *punishment* of crimes was vested in the Public Prosecutor alone, without whose concurrence no step towards prosecution for that end could be taken by the private party, whose right, as an individual, was to prosecute for *assuagement* or satisfaction, to solace his own feelings and redress his own wrong, not “to deter others from committing the like crimes.” In the present

⁸⁶ See Appendix VI (Limited Edition)

⁸⁷ *Ibid*

The Immunity of Hare.

case a compact was entered into by the informant with the representative of the community for the public interest and good, this compact was acted upon, the informant made disclosures, and pointed out witnesses and sources of evidence, he appeared in the box and gave evidence in open Court. By so doing he had surrounded himself with dangers to which he would not otherwise have been exposed. In short, he could not "be put back to his former situation," and it was no longer possible for him to have a fair trial. Yet it was now attempted by one of the community, the private party, to enforce the claim of punishment by means of the information so obtained. When the witness was introduced he was desired to speak only to the case of Docherty, but this warning was given at the request of counsel for the prisoners. When it was proposed to ask witness "whether he had ever been concerned in any other murder," the Court held that though the question might be put, the witness was not bound to answer it, as it might embrace "other crimes than those in reference to which he had been brought forward." That no questions were asked the informant when in the box as to the case of James Wilson was not due to his fault: he had already disclosed all he knew of that matter. The protection from trial for any of the charges in Burke's indictment was at those proceedings declared by the Court to be full and complete. The point arose on the question of the credit to be given to the informant and his wife as witnesses, and the verdict of the jury probably depended upon the circumstance of the law being so laid down. "If the law is now for the first time to be declared against that understanding and opinion, let the operation of this new declaration be confined to future cases, but let not this new state of things—this alteration of a deliberate judgment of the Supreme Court—operate to the prejudice and injury of the informant, when matters are, in respect to him, no longer entire. To do otherwise would be productive of no good object. The ends of justice would not be thereby promoted. The public faith would be broken, and, above all, the informant could not now have a fair trial."

The information for the Wilsons, after reviewing the whole facts of the case, pointed out that the prisoner founded, in the first place, upon his examination before the Public Prosecutor and the pretended agreement on which he made disclosures; and, secondly, upon his examination as a witness at Burke's trial. The private parties had to support then title to prosecute and their constitutional right to bring to justice an individual guilty of an atrocious crime. They would also contest the doctrine of indemnity as founded on, and show that the indulgence granted to *socii criminis* was here sought to be stretched far beyond its legal limits. The propositions which they proposed to maintain were—(1) the right of the

Burke and Hare.

private party to prosecute is not controllable by the Public Prosecutor, and is independent of him, and (2) the *socius criminis* is only protected by the indulgence of the Court with regard to the particular crime as to which he gives evidence. Under the first head, after examining the authorities, it was argued that legally there were only two situations in which a prisoner could plead indemnity in bar of trial previous acquittal by a jury of the crime charged, or remission by the Crown. "The point which the prosecutors are anxious to establish, and which they feel confident is the sound and constitutional law upon the subject, is this, that whatever may be the nature of the private arrangement between the Public Prosecutor and the criminal, and whatever may have been his inducement to give up the right of calling upon the criminal to answer at the bar of justice for the crime of which he is guilty, that arrangement cannot deprive the private party of his right to insist for the full pains of law." If the law contemplated such a power in the Public Prosecutor, then prosecution at the instance of the injured party would be virtually at an end. "If the right be in the private party, how can it be wrested from them by the communications which pass between the criminal and a third party over whom they have no control, but to whom, on the other hand, the law gives no power of depriving them of that right of demanding justice and vengeance which it has vested in them?" After quoting the authorities of Burnett and Hume as sufficiently establishing their proposition, the informants proceeded to argue, under the second head, as to the effect to be given by the Court to the fact of Hare's examination as a witness upon Burke's trial. The history of the admission by our Criminal Courts of the evidence of *socii criminis* was reviewed at great length, the professional reader will find it set forth in the Appendix, but for others even an abridgement would prove unfruitful. The result of an examination of the previous cases was summarised as follows —The Court has not hitherto acquired the power of interposing between an alleged criminal and the course of justice in those cases where he has not given evidence before it as to the peculiar crime charged. There is no authority for carrying that interposition farther, and without recurring to the question of expediency, it is difficult to reconcile the claim of indemnity as matter of right with the fact that an indulgence of the Court, not recognised by statute or founded upon any precise law, must be extended far beyond its ordinary limits before the plea can be sustained. As to what happened at Burke's trial, it was pointed out (1) that Hare was examined upon no other murder than that of Docherty, and (2) that he was distinctly warned that he was not bound to answer any question with regard to the other murders contained in the indictment, because, as to any other murder except that under investiga-

The Immunity of Hare.

tion, he was not protected by the Court. The question asked as to the murder of James Wilson was *not* answered, Hare availing himself of his right to refuse to answer. Hitherto a witness was only protected from trial for the particular crime as to which he had given evidence. The prisoner had given none as to the crime of which he was now accused, and therefore was not placed in that situation which entitled him to the protection of the Court. Whether or not a criminal in certain circumstances might be entitled to a pardon was a different question, which in the public interest should remain the prerogative of the Crown.

When on 2nd February the High Court of Justiciary met to "advise" the cause, the conditions were wholly favourable. The atmosphere was redolent of that national flavour peculiar to the Parliament House, of which Robert Louis Stevenson has so fondly written: "We have a solemn enjoyable way of lingering on a case. We treat law as a fine art, and relish and digest a good distinction. There is no hurry; point after point must be rightly examined and reduced to principle, judge after judge must utter forth his *obiter dicta* to delighted brethren."⁸⁸ No more typical example of the truth of this passage could be wished than the opinions of the bench in the present case afford. The Justice-Clerk (Boyle) presided; with him were Lords Gillies, Pitmilley, Meadowbank, Mackenzie, and Alloway. Duncan McNeill and Hugh Bruce appeared for Hare, Francis Jeffrey, Thomas Hamilton Millar, and E. Douglas Sandford for the Private Prosecutors, the Lord Advocate (Rae) and the Solicitor-General (Hope), with three advocates-depute (Dundas, Alison, and Wood), represented the Crown. The case attracted unusual interest: lawyers looked to see a "kittle" point decided, the public, who cared nothing for the legal principle involved, hoped and believed that the issue would be the hanging of Hare. Jeffrey having briefly stated his case, McNeill said that he had nothing to add to what was contained in the printed information, and the Court proceeded to pronounce judgment.

The long and elaborate opinions delivered *seriatim* by the six judges may be studied at large in the Appendix.⁸⁹ It is sufficient for our present purpose to record the ultimate decision. By a majority of four to two the Court held that Hare could not be prosecuted for the murder of James Wilson, ordered him to be set at liberty, and quashed the proceedings taken against him by the Wilsons. Lords Gillies and Alloway, who were in the minority, expressed upon all these points a contrary opinion.

But Hare was not yet out of the wood. another effort was to be made to avenge Daft Jamie's death. Immediately after the above judgment was pronounced his relatives presented to the Sheriff a petition,⁹⁰ stating their

⁸⁸ *Edinburgh Picturesque Notes*.

⁸⁹ See Appendix VI (Limited Edition). ⁹⁰ *Ibid*

Burke and Hare.

intention to raise a civil action against Hare for an "assythment" of £500 for the murder of James Wilson, that Hare was *in meditatione fugæ*, and craving his detention till he found caution *de judicio sibi et judicatum solvi*, which, being interpreted, meant that Hare purposed to fly the country, and should be bound to find security that he would, as the phrase is, face the music. In support of this application Mr and Miss Wilson gave their oath of verity regarding the facts, and the same day, 2nd February, Hare was judicially examined. Asked whether he was concerned in killing James Wilson, he declared, "That he will say nothing about it." Further questioned as to where he was born, whether he had any trade in Edinburgh, where he would go if liberated from jail, whether he was afraid the mob would kill him when he got out, &c, he remained silent. The sole question to which he replied related to his ability to write, which he answered in the negative.⁹¹ Mr Munro, agent for the petitioners, in respect of their oaths and Hare's examination, moved for a warrant of commitment until caution should be found, and the Sheriff allowed the petitioners a proof of all facts and circumstances tending to show that Hare was in contemplation of flight. The first witness called was William Lindsay, a fellow-prisoner, who deposed that he had known Hare for two months in jail, Hare told the deponent that he was by trade a labourer, and sold swine and herrings. He did not say that he dealt in anything else. He said he was a native of Ireland, and had been in Scotland for two or three years before the King came,⁹² and that whenever he was liberated he would go to Ireland. John Fisher, head turnkey, Calton Jail, corroborated. Hare himself, being asked if he wished to adduce any proof of his intention to remain in Scotland, answered that he had no money, and must go somewhere to get work, he could not stay in Edinburgh, but did not know whether he would remain in Scotland, or go to England or Ireland in quest of employment. The Sheriff then pronounced an interlocutor, granting warrant to apprehend Hare and to incarcerate him in the Tolbooth, there to be detained until he found sufficient caution in any action to be brought against him within six months for payment of the sum mentioned in the petition. This for the Wilsons proved but a barren victory, Hare was obviously not in a position to afford them pecuniary "satisfaction," and nothing was to be gained by keeping him temporarily locked up. So, on reconsideration, the warrant was withdrawn, and on 5th February the door of the cage was opened at last and the wild beast let loose.

The flight of the murderer from the scene of his iniquities is graphically

⁹¹ Burke, by the way, was less illiterate and wrote, for his condition, a respectable hand, though his spelling was as infamous as his life.

⁹² George IV visited Scotland in August, 1822.

The Immunity of Hare.

described by an ingenious reporter ⁹³ At eight o'clock that Thursday night Hare, muffled in an old camlet cloak and with a hat pulled over his eyes, crept out of the Calton Jail, and accompanied by the head turnkey, drove in a hackney coach to Newington, where they awaited the passing of the southward mail. Memories of his scientific patron, whose house was hard by, must have been present to the fugitive's mind, perhaps, like Burke, he still hankered after the balance due to him upon the last transaction. When the mail came up Hare clambered to an outside place, his companion loudly calling out, "Good-bye, Mr Black, I wish you well home"—this appropriate pseudonym being designed to avert suspicion. At Noblehouse, the first stage on the road from Edinburgh to Dumfries, *via* Moffat, where, as readers of *Redgauntlet* will recall, Alan Fairford parted from Darsie Latimer, the passengers alighted for supper. Hare followed the others into the inn parlour, and at first prudently kept in the background, but as the night was very cold, and some one good-naturedly bade him draw near the fire, he took off his hat and began to warm himself at the blaze. Among the "insides," by a strange chance, was Mr Douglas Sandford, who had acted as junior counsel for Daft Jamie's kinsfolk. This gentleman, standing by the hearth, instantly recognised in the stranger the subject of the late proceedings, and shook his head at him in a threatening manner. At that moment the guard's horn sounded, and everybody hurried out to the coach. Hare, who appears to have had enough of the roof, took possession of a vacant seat inside, and the advocate perceiving this, sternly ordered the guard to "take that fellow out!" Hare was accordingly compelled to remount his unattractive perch. To explain the seeming harshness of his action, Mr Sandford disclosed to his companions the identity of their fellow-traveller, and so soon as the mail reached Dumfries the news that Hare was a passenger flew like wildfire through the town. A crowd of some 8000 people, determined to catch a glimpse of so notorious a villain, blocked the High Street before the King's Arms, in which hostelry the murderer had sought seclusion. It became known that he was bound for Portpatrick, and four hours must elapse till the departure of the mail for that place; meanwhile Hare held an involuntary levee in the tap-room, whither a multitude struggled for admission. He accepted all offers of drink, but declined to make any statement in return: "he had said enough before, he had done his duty in Edinburgh." The audience became impatient, ominous cries of "Buike the ——!" marred the harmony of the proceedings, and so quickly does the temper of a crowd change that in an instant, says our authority, "Hare was nosed, and squeezed into

⁹³ *Dumfries Courier*, 10th February, 1829. An abridged account appeared in Buchanan's report of the trial; I have here followed the original version. The article was written by John M'Diarmid, the editor.

Burke and Hare.

the smallest possible corner, strongly reminding us of a hunted fox when he stops short, turns round, shows his teeth, though unable to fly, and vainly attempts to keep the jowlers at bay." But for the timely arrival of the police upon the scene there is little doubt that Hare's course would have been run. The yard of the inn was with difficulty cleared, and the premises were guarded by policemen. Such was the uproar prevailing in the town that the magistrates met to consider how best to rid themselves of the hateful visitant. Before the departure of the mail two intending passengers were sent on ahead in a gig, and the coach left at its usual hour with windows closed. The precaution was a wise one, for at the bridge a huge crowd awaited it, with the laudable purpose of drowning the expected traveller in the river. Great was the disappointment when it was found that the coach was empty, so the mob surged back again to the King's Arms. Presently a chaise and pair were brought to the door, a trunk was buckled on, "and a great fuss made," whereby the attention of the multitude was closely held. At the same time Hare was forced to jump out of a back window, climb the stable wall, and leap into another chaise, which drove furiously off. The mob, scenting some manoeuvre, speedily rushed in pursuit, and after a brief but exciting chase the fugitive reached the jail in safety. It is probable that no man ever was more thankful to be behind prison walls. All day long till far into the night a clamorous crowd besieged the jail, windows were broken, the street lamps smashed, and the door was battered with great stones to effect an entrance. Throughout the tumult Hare slept peacefully, but as the night wore away the attack slackened, owing to the appearance of 100 special constables armed with batons and specially enrolled for the occasion, and the authorities decided that it was time for him to "move on." Roused from his slumbers Hare was told to make ready for the road. In the small hours of Saturday morning, escorted by a sheriff officer and guarded by militiamen, the miscreant was taken out of the town by a circuitous route, set upon the Annan road, "and left to his own reflections and resources." By daybreak he was beyond the Border, and on Monday the driver of the north mail reported having passed him on the road within half a mile of Carlisle. On Sunday morning he was seen two miles beyond that town, and from thenceforth all authentic trace of him is lost. Where he went, and how he continued to support the dread burden of his wickedness is unknown.

Naturally, in the circumstances, all sorts of rumours as to his alleged recognition were afterwards rife, and for many a long day divers venerable Irishmen of repellent aspect suffered much physical and mental inconvenience by reason of some supposed resemblance to the assassin of the West Port. A persistent tradition holds that Hare's identity having been



• **Dr. Knox Lecturing.**

From a Contemporary Drawing by Professor Edward Worbes

The Immunity of Hare.

discovered by some fellow-workmen, he was thrown into a lime pit, with the result that his eyes were destroyed. Mr J. B. Atlay, the accuracy of whose facts as a rule is on a par with the excellence of their presentation, confidently states that Hare, as a sightless beggar on the streets of London, survived his confederate Burke for more than forty years. "It will," he writes, in the last year of the nineteenth century, "be within the recollection of many Londoners, who are not yet past middle age, that when their childish walks took them on the north side of Oxford Street, one of the principal attractions consisted in the view of a certain blind beggar, who, with dog and stick, was wont to solicit alms of the passers-by. His story was on the lips of every nursemaid, and he was pointed out to awe-struck children as William Hare, one of the actors in the West Port murders."⁹⁴ If, as Professor Christison records of the period of Dr. Knox's eclipse in London, "one of his last occupations was that of lecturer, demonstrator, or showman to a travelling party of Ojibbeway Indians,"⁹⁵ the doctor's ancient ally, had he chanced to come across him, would have proved an interesting addition to the show.

IX.

Nemesis and Dr. Knox.

I will stamp him into a culis, flay off his skin to cover one of the anatomies this rogue has set i' th' cold yonder in Barber-Chirurgeons' Hall.

—*The Duchess of Malfi.*

The most inquisitive reader who has courteously attended thus far at this presentation of the West Port tragedy must have been aware, behind the squalid figures of the actors in the hideous plot, of a presence, veiled, suggestive, possibly sinister—the shadow of Dr. Knox. For whatever be the view taken of the degree of blame attaching to that gentleman, it will hardly be disputed that he was the person mainly responsible for the production of the piece, and that his acquiescence or concurrence, whether due to lack of the will or of the skill to note what went on behind the scenes, was essential to its successful performance. As the doctor, with a modesty and reticence not usually characteristic of his conduct, was, throughout the legal proceedings which have been described, chiefly conspicuous by his absence, the time has come to visit the anatomist in his seclusion, to see what manner of man he was, and to inquire how far he may be deemed accountable for the heinous acts of his employees.

⁹⁴ *Famous Trials of the Century*, p. 19.

⁹⁵ *Life of Sir Robert Christison*, I., 311.

Burke and Hare.

Robert Knox was born in Edinburgh on 4th September, 1791⁹⁶ His father taught mathematics in Heriot's Hospital, his mother was "of German extraction", from her perhaps the son inherited his indifference, *more Germanico*, to many things held in reverence by Scotsmen. The family claimed kinship with the great Reformer, whose fiery and contentious spirit may possibly have influenced his descendant, to whom, however, he failed to transmit any measure of his religious faith. Robert attended the old High School, the nursery of so many of Edinburgh's famous sons, which he left in 1810 with a brilliant record as Dux and Gold Medallist. In November of that year he joined the medical classes of Edinburgh University, and devoted himself specially to the study of anatomy, of which subject Monro *tertius* was then professor, later, esteeming that official guide but a blind one, he transferred his allegiance to Barclay, then the leading extra-mural lecturer, of whom he rapidly became one of the best and keenest pupils. He graduated in 1814, and began the life-long series of contributions to medical journals which earned for him so high and wide a reputation in the scientific world. In 1815, having obtained a commission as assistant surgeon, he was attached to the military hospital in Brussels, where he attended the wounded from the field of Waterloo. Gazetted to the 72nd Highlanders, in 1817 Knox sailed with his regiment to the Cape. Of his exploits there his biographer records, "No African traveller could surpass Knox in storytelling. Mounted on his famous Arabian mare, that could travel ninety miles apparently without the slightest fatigue, and armed with a rifle of marvellous aim, Knox single-handed achieved wonderful things."⁹⁷ One calls to mind in this connection the Arabian tales of a later medical traveller—Dr Pritchard; but that physician's favourite weapon was the longbow. Returning to England in 1821 Knox obtained from the military authorities a year's leave to study in the medical schools of the Continent, and in Paris he enjoyed the friendship of Cuvier and other savants. In 1822 he was, at his own request, placed upon half-pay, which he continued to draw for ten years longer, when he finally left the service.

The year 1823 found Knox established in Edinburgh, busily contributing to divers learned bodies papers on anatomical and physiological subjects, of which he was already an acknowledged authority. He became a Fellow of the Royal Society of Edinburgh, and also joined the Medico-Chirurgical Society, but he had no ambition towards a general practice, his whole time being absorbed in private dissections. In 1824 he proposed

⁹⁶ For the general facts of Knox's career I am indebted to Dr Lonsdale's instructive memoir of his old chief.

⁹⁷ *Life of Robert Knox*, p. 13.

Nemesis and Dr. Knox.

to the College of Surgeons the formation of a Museum of Comparative Anatomy, on which he expressed himself willing to bestow his whole labour and time, "with that energy which the cultivation of a very favourite pursuit naturally gives"⁹⁸ The proposal was accepted, on his advice the valuable collection formed by Sir Charles Bell was purchased in London, and Knox was appointed Conservator of the Museum at a salary of £150 a year. He classified and catalogued the entire collection, which he was afterwards indefatigable in improving and extending.

At that time the ablest and most gifted teacher of anatomy in the Edinburgh medical schools was Dr. John Barclay, he had long recognised in Knox a worthy disciple, and in 1825, being full of years and honours, he offered his old pupil a partnership, which was willingly accepted. When Barclay died in the following year, leaving his private collection to enrich the museum, his partner, by the terms of their agreement, succeeded to the whole duties and emoluments of the lectureship. Knox, who was now admitted to the Fellowship of the Royal College of Surgeons of Edinburgh, began his first course of lectures on anatomy and physiology in the winter session of 1825-26. "Knox's public appearance might well excite attention," writes Dr. Lonsdale. "Here was a first year's lecturer of marked individuality in style, treating anatomy as a pastime of the hour, yet giving to its demonstration a practical aim and philosophic character. To attempt to follow Barclay in any direction implied courage and experience, and to claim the privilege of succeeding so able a man augured the possession of talents of no small magnitude. Knox was more than a successor to his distinguished master, he was himself, and soon came to be designated by his class as '*Knox primus et incomparabilis*,'"⁹⁹

We have seen in a former section under what conditions the practice of anatomy was at that period pursued in Edinburgh. The supply of subjects lawfully to be obtained was nugatory, even the respectable Monro must needs depend for *matériel* upon the zeal and ingenuity of his students, or the peripatetic activities of the professional body snatcher. Knox's success as a lecturer was instant and assured. So popular were his demonstrations that he soon had between 300 and 400 students—two-thirds of the whole medical school—in his class-rooms. Anatomy was for him no mere profession, but a personal hobby, in the pursuit of which he grudged neither time, labour, nor expense. So reckless was he of his own pocket in this regard that Dr. Lonsdale says, "in one session he lost the almost incredible sum of £700 or £800 by 'subjects' alone—a loss vastly surpassing some anatomical lecturers' entire gains. Without wishing to outbid rivals richer than himself in money means, he could not, with 400 pupils

⁹⁸ *Life of Robert Knox*, p. 37

⁹⁹ *Ibid.*, p. 46

Burke and Hare.

around him, bear to see empty tables, much less to hear the importunate solicitations of his class seeking for professional opportunities that were denied them away from a medical school.¹⁰⁰ As a result of these feelings and owing to his more liberal terms, Knox's tables were much better furnished than those of his competitors, and his biographer records that "No 10 Surgeons' Square had a supply which no other establishment possessed."¹⁰¹ The doctor, proud of this pre-eminence and nowise prone to hide his light under a bushel, was wont to brag that he "could always command subjects"—in view of later events an unfortunate boast, upon which the worst construction, of course, was popularly put.

In his biographer's phrase Knox "lived to lecture." The winter session of 1828-29 found him at the summit of his fame,¹⁰² he had 504 pupils, and as Barclay's old lecture-room could barely accommodate 200, Knox was obliged to deliver each day's lecture thrice, to three different classes on the same subject and day. His students worshipped him, and his senior assistants, Fergusson, Jones, and Miller, vied with one another in loyalty to their chief. No such anatomical class had ever assembled in Britain, never did lecturer address more crowded and applauding benches, never was academic audience roused to greater heights of enthusiasm.

But if the reputation of the scientist was as brilliant as it was deserved, that of the man presented an aspect much less admirable. Though Dr Knox was the idol of his students, his popularity was bounded by the walls of his class-room. Socially he had no success, he had married in secret "a person of inferior rank," and his unattractive appearance—like Mr Squeers "he had but one eye, and the popular prejudice runs in favour of two"—his "loud" attire, his cynical and caustic speech, and, above all, his avowed contempt of creeds and churches, were little likely to endear him to the orthodox and strait-laced worthies of whom Edinburgh society was then composed. His home at No. 4 Newington Place might have been a hermitage but for the six pledges of his unconventional union; Mrs Grundy left no card there, and the faithful looked at it askance. Further, Knox's unamiable disposition, his vanity, egoism, and habit of disparaging in biting phrase the characters and work of rival teachers, cost him the goodwill and esteem of his professional brethren, while even his partial biographer has to admit such "shadows in the portrait" as want of candour, untrustworthiness, and prevarication, in his dealings with his fellow-men. The doctor, in short, anticipating the privileges of the superman, believed himself too big to be trammelled

¹⁰⁰ *Life of Robert Knox*, p. 92.

¹⁰¹ *Ibid.*, p. 72.

¹⁰² A facsimile of the Notice of Lectures for this memorable session is given in the present volume.

ANATOMY AND *Physiology.*

DR KNOX, F.R.S.E. (*Successor to DR BARCLAY, Fellow of the Royal College of Surgeons and Conservator of its Museum,*) will commence his **ANNUAL COURSE** of **LECTURES** on the **ANATOMY** AND **PHYSIOLOGY** of the Human Body, on Tuesday, the 4th November, at Eleven A. M. His **EVENING COURSE** of **LECTURES**, on the same Subject, will commence on the 11th November, at Six P. M.

Each of these Courses will as usual comprise a full Demonstration on fresh Anatomical Subjects, of the Structure of the Human Body, and a History of the Uses of its various Parts, and the Organs and Structures generally, will be described with a constant reference to Practical Medicine and Surgery.

FEE for the First Course, £3, 5s, Second Course, £2, 4s, Perpetual, £5, 9s.

N B—*These Courses of Lectures qualify for Examination before the various Colleges and Boards*

PRACTICAL ANATOMY AND **OPERATIVE SURGERY.**

DR KNOX'S ROOMS FOR **PRACTICAL ANATOMY** AND **OPERATIVE SURGERY**, will open on Monday, the 6th of October, and continue open until the End of July 1829.

Two **DEMONSTRATIONS** will be delivered daily to the Gentlemen attending the Rooms for **PRACTICAL ANATOMY**. These Demonstrations will be arranged so as to comprise complete Courses of the **DESCRIPTIVE ANATOMY** of the Human Body, with its application to **PATHOLOGY** and **OPERATIVE SURGERY**. The Dissections and Operations to be under the immediate superintendence of **DR KNOX**. Arrangements have been made to secure as usual an ample supply of Anatomical Subjects.

FEE for the First Course, £3, 5s, Second Course, £2, 4s, Perpetual, £5, 9s.

N B—*An Additional Fee of Three Guineas includes Subjects*

****** *Certificates of Attendance on these Courses qualify for Examination before the Royal Colleges of Surgeons, the Army and Navy Medical Boards, &c*

EDINBURGH, 10 SURGEONS' SQUARE,
25th September 1828

Bill of Dr. Knox's Lectures, 1828.

From the Original in the University of Edinburgh

Nemesis and Dr. Knox.

with such childish bonds as kindness and consideration for others; he had no use for that charity commended by the Apostle he was strong enough to stand alone. And when with startling suddenness his day of judgment dawned, verily it was alone he had to stand

Of the spiteful spirit which informed Knox's attitude towards his fellow-labourers in the field of science an amusing instance is given by Leighton, from the MS notes of a student present at the lecture in question:—

Before commencing to-day's lecture, I am compelled by the sacred calls of duty to notice an extraordinary surgical operation which has this morning been performed in a neighbouring building by a gentleman [Luston] who, I believe, regards himself as the first surgeon in Europe. A country labourer from the neighbourhood of Tranent came to the infirmary a few days ago with an aneurism of considerable extent, connected with one of the large arteries of the neck, and notwithstanding of its being obvious to the merest tyro that it *was* an aneurism, the most distinguished surgeon in Europe, after an apparently searching examination, pronounced it to be an abscess. Accordingly, this professional celebrity—who among other things plumes himself upon the wonderful strength of his hands and arms, without pretension to head, and as an amateur member of the ring—plunged his knife into what he thus foolishly imagined to be an abscess, and the blood bursting forth from the deep gash in the aneurismal sac, the patient was dead in a few seconds. This notable member of the profession is actually an extra-academical lecturer on surgery in this great metropolis, and on this occasion was assisted by a gentleman similarly constituted both intellectually and physically, who had been trained up under the fostering care of a learned professor in certain university [Monro], who inherited his anatomical genius from his ancestors, and who has recently published a work on the anatomy of the human body, in which among other notabilities no notice is taken of the pericardium. Tracing the assistant of our distinguished operator further back, I have discovered that he had been originally apprenticed to a butcher of this city, but that he had been dismissed from this service for stealing a sheep's head and trotters from his employer's shambles. It is surely unnecessary for me to add that a knowledge of anatomy, physiology, pathology, and surgery, is neither connected with nor dependent upon brute force, ignorance and presumption, nor has it anything to do with an utter destitution of honour and common honesty 103

Small wonder that Luston, Monro, and the assistant surgeon failed to appreciate what Leighton terms the "devil's humour" of their gifted colleague. It is noteworthy that Dr. Lonsdale, who complains of Leighton's prejudice, does not dispute the accuracy of this report

For the reasons to which I have so often referred no judicial opportunity was afforded Dr. Knox and his assistants to vindicate their fair fame. The ordinary man, placed in a position so ambiguous, and denounced both by the popular voice and by the Press as art and part in the West Port murders, would have seized the earliest occasion to assert and prove his innocence. But Knox was not an ordinary man. Ever intolerant of criticism, he was deaf alike to friendly counsel, reasoned censure, and the maledictions of the mob. "I will do just as I have done heretofore," he told his students in his introductory lecture of January, 1829, when the

¹⁰³ *Court of Cucus*, pp. 20-21n

Burke and Hare.

class met for the first time after the revelations of the trial and while Burke still awaited execution, and for two months longer he continued to hold his peace

In order rightly to appreciate the significance for his contemporaries of Dr. Knox's silence, let us see what were the imputations to which he thus professed himself indifferent. The views of the *Caledonian Mercury* on the subject may be gathered from the excerpts from that journal which are printed in the Appendix ¹⁰⁴ In demanding an inquiry into the conduct of the anatomical schools the editor remarked—

The public can have no authentic and satisfactory knowledge of this without a full and complete investigation, they can have no guarantee that every anatomical teacher in Edinburgh has not a Burke in his pay at this moment. The present impression on the minds of the people is, that one gentleman stands in the same relation to Burke that the murderers of Banquo did to Macbeth

The *Edinburgh Weekly Chronicle* seconded the demand, and observed—

In purchasing the bodies which had come under the fell gripe of the Burkes and the Hares, there must have been an utter recklessness—a thorough indifference as to causes and consequences, which, in point of criminality, very closely borders upon *guilty knowledge*

And in a subsequent issue the same journal dealt thus plainly with the position of Dr. Knox in relation to the crimes—

With regard to Dr. Knox, too much delicacy and reserve have been maintained by a part of the press. When the atrocities in question first transpired, it was stated that Knox conducted himself with the utmost civility towards the police-officers who went to his house in search of the body, when the fact is, he swore at them from his window, and threatened to blow their brains out, and it was only upon their proceeding to force the door of his lecture-room, that it was opened by one of the keepers. Farther, a number of citizens have been called "fellows" by the press, because, acting upon a virtuous feeling, they ventured, illegally we grant, to indulge it, by breaking the windows of that man by whose myrmidons the temple of human life had been so often broken into and despoiled. Great pains, too, have been taken to persuade the public that the doctor was imposed upon by Burke and Hare with regard to the mode in which they acquired their *subjects*, but mark how a few queries will put down that supposition! Were not bodies—one of them of a girl, with her hair *en papillote*—both warm and supple, repeatedly received into his lecture-room? Did not Burke and Hare exclusively deal with Dr. Knox, and must not all their *subjects* have exhibited nearly the same symptoms—which symptoms, in the case of the woman Docherty, at once satisfied other medical men that she had been violently bereaved of life? And why did not the constant recurrence of these symptoms, as well as the symptoms themselves, rouse Dr. Knox's suspicions?

The doctor, however, was not disposed to gratify the curiosity of the *Chronicle* upon these points

The most powerful indictment of Dr. Knox came from the pen of Professor Wilson in *Blackwood's Magazine*. It is too long for quotation here, but is readily accessible in *Noctes Ambrosianæ*, where it is reprinted at length. The following excerpt will serve to show its quality—

¹⁰⁴ See Appendix VII. (Limited Edition)

Burke and Hare.

a sally from the front door and drove the boldest besiegers out of the garden; but the mob held the street, a fusillade of stones began, several officers were hurt, and the doctor's windows sustained much damage. Kindred disturbances occurring that night in other quarters of the town were quelled by the police, and an attack on Surgeons' Square was repulsed with loss. Some twenty of the rioters were apprehended and duly fined, their fines being, as the *Weekly Chronicle* informs us, "defrayed out of a stock purse previously collected." A similar ceremony was later performed at Portobello, to which watering-place it was understood the doctor had retired; there he was burnt in effigy at the head of Tower Street, on the site of the old-time gibbet.¹⁰⁷

According to Dr Lonsdale's account, Knox on the night of the riot escaped from his house by the back door, he wore his military cloak, and was armed with a sword, pistols, and a Highland dirk. "Had I been called upon to defend myself," said he, "I would have measured a score of the brutes."¹⁰⁸ But the mob was too busy to notice his departure. For many a long day the doctor continued to reap the harvest of his own sowing. Hostile crowds beset his lecture-room, and the bodyguard of students by whom he was attended were often called upon to do battle for their unpalatable chief.

At length even so stubborn a man as Knox was convinced of the necessity for making that effort, the lack of which on the part of the first Mrs Dombey her sister-in-law so loudly deplored. On 7th February the *Scotsman* was able to state that an investigation would shortly take place as to Dr Knox's dealings with Burke and Hare, and on the 11th it was announced that a committee of gentlemen, with the Marquess of Queensberry at their head, had undertaken to conduct the inquiry. "We are sincerely glad," continued that journal, "that such a measure has been adopted, for this, or something like this, was absolutely necessary to satisfy public feeling. That it may answer this end completely the examination must be full and fair, the evidence must be taken impartially, and none of any value refused, and, what is still more important, the whole evidence, as well as the opinions of the examiners, must be laid before the public. The rank, station, and character of these individuals, indeed, assure us that they will act with the strictest impartiality, and we have no doubt they will adopt the course we have described."¹⁰⁹ The result of the Committee's deliberations fell somewhat short of these requirements. To begin with, the personnel was of the doctor's own choosing, then the noble chairman "ceased to act long before the evidence was completed,"

¹⁰⁷ *Scotsman*, 4th March, 1829.

¹⁰⁸ *Life of Robert Knox*, p. 110.

¹⁰⁹ *Scotsman*, 11th February, 1829.

Nemesis and Dr. Knox.

no reason for his resignation being vouchsafed,¹¹⁰ the inquiry took place in private, and the finding of the Committee only, not the evidence upon which it proceeded, was made public. The result, however, satisfied the person chiefly concerned, and on 17th March Dr. Knox broke his long silence in a letter to the *Caledonian Mercury*, transmitting for publication the Committee's report.¹¹¹ The doctor stated that he had taken legal advice regarding the public calumnies of which he had been the object, and that in the opinion of the Dean of Faculty "there was no want of actionable matter"—the reader will agree that the learned Dean's view was sound—but he was restrained from seeking redress in the law Courts, as the consequent disclosures of dissecting-room methods might "shock the public and be hurtful to science." To the crucial question of his dealings with the murderers and with the bodies of their victims Dr. Knox made no reference, beyond the casual remark that his "happened to be the establishment with which Burke and Hare chiefly dealt."

The report of the Committee, which was published in the Edinburgh newspapers of 21st March, will be found printed at length in the Appendix.¹¹² While admitting that the circumstances in which the subjects were furnished by Burke and Hare "appear calculated to excite suspicion," the Committee "found no evidence of their actually having excited it in the mind of Dr. Knox or of any other of the individuals who saw the bodies." At the same time they thought the doctor had acted "in a very incautious manner," and they regarded as "unfortunate" his direction to his assistants to make no inquiries of persons bringing bodies, as likely "to diminish or divert the supply of subjects." The only ground of censure which the Committee could discover in the doctor's relations with Burke and Hare was that by the laxity of the regulations under which bodies were received into his rooms, "he unintentionally gave a degree of facility to the disposal of the victims of their crimes, which under better regulations would not have existed."

The amount of whitewash thus administered by the Committee appearing to me in the circumstances inadequate, as a layman unfamiliar with the ethics of the dissecting-room, for my own satisfaction and from a desire to be just, I have put the following query to certain surgeons of eminence known to me. Whether, it being admitted that two men, unconnected with the recognised Resurrectionists, sold to Dr. Knox within the space of nine months sixteen *fresh* corpses, none of which had been buried or presented any appearances of death from natural disease, that gentleman, expressly

¹¹⁰ Dr. Knox's Letter, Appendix III.; *Edinburgh Evening Courant*, 23rd February, 1829

¹¹¹ Appendix III.

¹¹² Appendix IV.

Burke and Hare.

deprecating as he did all inquiry as to how such bodies were obtained, could have failed to suspect foul play? And in each case the answer has been in the negative.

It must always be for the angels matter of especial mourning when a brilliant and useful career suffers eclipse, and its achievement is rendered nugatory, by reason of some subtle flaw in the foundations of its success. In Dr Knox's case that defect was vanity at all costs he must maintain his professional repute for a well-kept "table" We have seen that there was no pecuniary sacrifice to secure that end for which he was not prepared, would such a man be prone to pry too curiously into the sources of his supply, when subjects were offered to him in quality, if not in quantity, far superior to the damaged goods furnished by the regular staff? If he did not know anything about them, it was because he didn't wish to know, and undue curiosity would have affected the market. He cannot, as the phrase is, have it both ways either he had his suspicions, and failed to stop the traffic, or he—*primus et incomparabilis*—was so ignorant of his art as to believe that every one of them died a natural death. Dr. Knox had but one eye, yet even that solitary organ must have seen more than he was willing to admit. He kept his blind side steadily turned to Burke and Hare.

Wise and good men among the doctor's contemporaries took a very grave view of his behaviour. Sir Walter Scott on 14th January records that he caused a meeting of the Council of the Royal Society to be called, as Knox, "whose name has of late been deeply implicated in a criminal prosecution," proposed to read before that body a paper on anatomical subjects. "A bold proposal truly from one who has had so lately the boldness of trading so deep in human flesh! I will oppose his reading in the present circumstances, if I should stand alone"¹¹³ At the Council "Mr. Knox's friends undertook to deal with him," and the paper was quietly dropped¹¹⁴ Scott makes no reference to the Knox report, but Professor Chrustison, who remarks that it "came to no clear conclusion," has the following observations on the matter —

My own opinion at the time was that Dr. Knox, then the most popular lecturer on anatomy in Edinburgh—with a class of upwards of 300 students, whom he must have found it very difficult to supply with sufficient materials for dissection—had rather wilfully shut his eyes to incidents which ought to have excited the grave suspicions of a man of his intelligence. In a conversation I had with him before the information obtained from Hare and his wife had been communicated to me, I observed that the body taken by the police from his rooms must have been delivered there while warm and flexible, and consequently never had been buried. He made very light of this suggestion, and told me that *he had ten or eleven bodies brought the previous winter to his rooms in as recent a state; and that they were got by his providers watching the low lodging-houses in the Cow-*

¹¹³ *Journal of Sir Walter Scott*, II., 217.

¹¹⁴ *Ibid*, II., 218

Nemesis and Dr. Knox.

gate, Grassmarket, and West Port, and when a death occurred, purchasing the body from the tenant before any one could claim it for interment. But Dr. Knox could scarcely have been so little aware of the habits of the low populace who frequent these dens, as not to know that a death in one of them brought a constant succession of visitors to look at the corpse, and keep up a series of orgies till they saw it carried off for burial, and consequently that *no such arrangement with the lodging house keeper as he described was practicable*. In fact, Professor Syme told me that, when he taught anatomy a short time before, he had tried to organise such a system of supply, but that he found it impossible, for the reason now given. Knox, a man of undoubted talent but notoriously deficient in principle and in heart, was exactly the person to blind himself against suspicion and fall into blameable carelessness. But it was absurd to charge him with anything worse.¹¹⁵

For the defence, however, Henry Cockburn has maintained—

All our anatomists incurred a most unjust, and a very alarming, though not an unnatural odium, Dr. Knox in particular, against whom not only the anger of the populace, but the condemnation of more intelligent persons was specially directed. But tried in reference to the invariable and the necessary practice of the profession, our anatomists were spotlessly correct, and Knox the most correct of them all.⁽¹⁾¹¹⁶

One wonders how "our anatomists" appreciated the compliment implied in the words I have italicised. On the merits, it is permissible to differ from the learned counsel: not every one saw eye to eye with him on the question of M'Dougal's guilt. In another passage Cockburn observes that Burke, "*except that he murdered*," was a reasonable and respectable man; the exception was certainly worth noting. In support of his opinion Cockburn might have cited the "respectable" authority of his late client's paramour. "Burk declares that doctor Knox never incoureged him, nither taught or incouregd him to murder any person, nether any of his assistants, that worthy gentleman Mr. Fergeson was the only man that ever mentioned any thing about the bodies. He inquired wherc we got that yung woman Paterson."¹¹⁷ It is improbable that this statement, added in his own hand at the end of his confession, was the spontaneous act of Burke; doubtless he was "incouregd" to make it by some influence emanating from Surgeons' Square.

The students, of course were overjoyed at the "acquittal" of their preceptor. His appearance among them after undergoing the cleansing process just described was greeted with ringing cheers. "Many of these who thus disgraced themselves and their human nature," says Professor Wilson, "were implicated in the charge; and instead of serving to convince any one, out of the shambles, of their own or their lecturer's innocence, it has had, and must have had, the very opposite effect."¹¹⁸ Desirous of offering some more tangible and enduring tribute, the class presented to their teacher a golden cup, which afforded matter for the

¹¹⁵ *Life of Sir Robert Christison*, i., 310-311.

¹¹⁷ *Courant Confession*, Appendix I

¹¹⁶ *Memorials*, 1856, pp. 457-458.

¹¹⁸ *Blackwood's Magazine*, March, 1829.

Burke and Hare.

pencil of contemporary caricature. This gift was accepted by the doctor as evidence that "the absurd imputations against me by which the public has been industriously misled, are viewed by you and by all reasonable men"—and Burke was a reasonable man—"as they deserve" Still, the *Scotsman* thought the presentation, in the circumstances, "injudicious."¹¹⁹

Another member of the late company divided at this time public attention with Dr. Knox—his doorkeeper, David Paterson Though the part of the janitor was relatively a minor one, his performance had been very ill received, and so strongly did David resent this, that on 15th January, 1829, he carried to the *Mercury* his "shameful wrongs" for redress, in a letter protesting his own innocence and throwing the whole blame upon his employer But though he asked the *Mercury* for the bread of consolation, he received an unexpected stone That journal promptly accused him, on evidence in its possession, of having within an hour of Miss Docherty's death offered her body for sale to "a highly respectable lecturer on anatomy" at the price of £15, stating at the same time that Dr Knox would give only £12 David, in reply, had to admit the attempted deal, but denied that the body was that of Miss Docherty it was one which "Merry Andrew"—Merrilees, the body snatcher, whom the reader may remember—had promised to supply David acknowledged that the coincidence "looks rather suspicious", and the *Mercury* agreed with him, maintaining at the same time the truth of its version I have thought it worth while to include the correspondence in the Appendix.¹²⁰

This was not the doorkeeper's sole contribution to *belles-lettres*. He had published under a graceful pseudonym a pamphlet, from which I have had already occasion to quote, professing to disclose "the accomplices, secrets, and other facts relative to the late murders"¹²¹ It appears from this publication that Paterson was employed by Dr Knox in February, 1828 Burke and Hare, who were professionally known in the Square as "John" and "William," were then familiar features of the establishment "Previous to this period Burke became a patient of Dr. Knox's, and came to the lecture-room to have his wound dressed"¹²² We have already heard what David has to say regarding the case of Mary Paterson, the only instance in which any inquiry was made as to where Burke got his goods, when that "honest tradesman" stated that "he had purchased

¹¹⁹ *Scotsman*, 25th March, 1829

¹²⁰ See Appendix VIII (Limited Edition).

¹²¹ *Letter to the Lord Advocate* . . . By the Echo of Surgeon's Square

¹²² Burke had long suffered from a scirrhus testicle; the cancer said to have been caused by the bite of Daft Jamie is a vulgar error.

Nemesis and Dr. Knox.

it from the friends of the deceased" "It was rather a new thing," continues David, "for me to hear of the relatives selling the corpses of their friends, and I inquired where the relatives lived, at this Burke looked very suspiciously at me, and at length said, 'If I am to be catechised by you where and how I get subjects I will inform the doctor of it, and if he allows you to do so I will bring no more to him, mind that' Now, as I remembered that I had *positive orders from the doctor not to interfere at all with these men*, I was content to be silent"¹²³ When the body was examined in Surgeons' Square "the face was of a strong livid colour, and traces of blood were observable at the mouth, nose, and ears"¹²⁴ With regard to the case of Daft Jamie, Paterson, as we saw, states that the body was recognised by the students, but that Dr. Knox "persisted that it was not Jamie" He specifies certain deviations from the usual course of dissection with which, upon the hue and cry for Daft Jamie, his remains were treated Though the invariable practice was to take the oldest subject first, his body "was ordered for dissection, although it was the last and freshest subject in the doctor's possession"¹²⁵ One of the assistants removed the head entire, and Fergusson secured the feet, which as Jamie's were notoriously malformed, was a wise precaution One would like to have heard what the Committee thought of this evidence, if Paterson was called before them. David is less satisfying in the account which he gives of his alleged suspicions in the case of Mrs. Docherty, which did not, however, prevent him from accepting delivery of her body. In this connection a scathing rejoinder by Dr. Knox's principal assistants was published in the *Mercury*, and may be read in the Appendix¹²⁶ Though David contended that he had been made "the scapegoat for a personage in higher life," his defence is not wholly convincing.

"I have a letter," writes Sir Walter Scott on 4th April, 1829, "from one David Paterson, who was Dr. Knox's jackal for buying murdered bodies, suggesting that I should write on the subject of Burke and Hare, and offering me his invaluable collection of anecdotes! 'Curse him impudence and dam him insurance,' as Mungo says in the farce Did ever one hear the like? The scoundrel has been the companion and patron of such atrocious murderers and kidnappers, and he has the impudence to write to any decent man!"¹²⁷ So much for Mr. David Paterson.

"All such matters as these subside in a short period, provided the individuals themselves do not adopt false steps," wrote Dr. Knox to the

¹²³ *Letter to the Lord Advocate*, p. 7. Burke, as we have seen, says "that worthy gentleman, Mr. Ferguson," was the only one who asked about Mary Paterson.

¹²⁴ *Ibid.*, p. 27

¹²⁵ *Ibid.*, pp. 17-18

¹²⁶ See Appendix VIII (Limited Edition).

¹²⁷ *Journal of Sir Walter Scott*, II, 203.

Burke and Hare.

doorkeeper, cautioning him to be careful in his walk and conversation. Whether owing to the doctor's failure to take his own prescription or because of the special features of the case, his prognosis proved mistaken. The feeling aroused against him was too strong and well founded to be speedily allayed, how stoutly soever he might face the storm, the winds that heretofore had swelled the sails of his success continued contrary, and in the end drove him on the rocks. But the doctor, characteristically, put up a good fight and met misfortune with his old assurance. Once only is he said to have shown any sensitiveness on the subject of the West Port murders. Walking one day in the Meadows with his friend Dr. Adams, the conversation turned upon the relation between physical form and mental qualities. A pretty little girl of some six summers was playing near them, the doctor stopped and spoke to her, finding in the child's beauty and intelligence an illustration of his theme. He presented her with a penny, and said, "Now, my dear, you and I will be friends. Would you come and live with me if you got a whole penny every day?" "No," replied the child, "you would maybe sell me to Dr. Knox!" The anatomist started back, his face twitched convulsively, and in the eye which had looked unmoved upon Mary Paterson there were tears. He walked hastily on, and was silent for some minutes, then, forcing a laugh, he muttered something of *vox populi*, and changed the subject.¹²⁸

Meanwhile the cares of his class and museum continued to afford him matter of distraction. His zoological proclivities led him to purchase for scientific purposes the carcass of a gigantic whale, cast up at North Berwick in 1831. The skeleton of this monster, which measured 78 feet and weighed 28 tons, is now a feature of the Natural History Collection in the Royal Scottish Museum, Edinburgh. Among the examples of Knox's incisive wit given by his biographer the following may in this connection be recalled —Dr. John Reid, the famous physiologist, in examining two sharks, found no vestige of brain, and consulted Knox on the anomaly. "It is not in the least extraordinary," said the doctor, "if you go over to the Parliament House any morning you will see a great many live sharks walking about without any brains at all."¹²⁹

About 1835, Dr. Lonsdale notes, there was a falling off in the number of Knox's class. "the tide was on the ebb, and the growing animosities of his contemporaries rendered that ebb more and more apparent."¹³⁰ In 1837 Knox applied for the Chair of Pathology, vacant on the resignation of Dr. John Thomson, to whom, having held other professorial appoint-

¹²⁸ *Life of Robert Knox*, pp. 115-116

¹²⁹ *Ibid.*, p. 209

¹³⁰ *Ibid.*, p. 195

Nemesis and Dr. Knox.

ments, Knox pleasantly referred as "the old chair-maker", he was not himself appointed, and his later application for the Chair of Physiology was also unsuccessful. In 1839 Knox left his old quarters in Surgeons' Square and joined the Argyle Square Medical School as lecturer on anatomy. The change was not for the better. "He committed a great mistake," says Dr. Lonsdale, "in staying upon the course when the race had been run, there could be no chance of a second heat in his case, and all probability of regaining public confidence was lost."¹³¹ In 1841 he removed to Glasgow, where his class was so small that he returned the fees to the pupils. No University would appoint him to a chair, no medical school in Scotland would open its gates to him. "Accomplished in every department of his profession," says his biographer, "he nevertheless could get no employment and no countenance."¹³² In London, whither he now resorted in the hopeless quest of recovering his lost position, Knox found occasional work as a popular lecturer, and to the end his pen was busy with his favourite subjects. In his latter years he took a practice in Hackney, where he did "a great deal in the obstetrical department." Dr. Lonsdale draws a pathetic picture of the brilliant scientist, labouring at his manuscripts "whilst his ears were dinned by the voluble Mrs. Gamp and puerperal groans."¹³³ Robert Knox died of apoplexy at No. 9 Lambe Terrace, Hackney, on 20th December, 1862, having completed his seventy-first year, and was buried in Woking Cemetery.

The moral of Dr. Knox's career is too obvious to call for comment; but the occasion of his downfall had other and more beneficent consequences. The passing of the Anatomy Act in 1832,¹³⁴ which put an end to all secret sources of supply to the anatomical schools of Great Britain and Ireland, was directly due to the situation brought about by Dr. Knox's "incautious" and "unfortunate" conduct. Thenceforth the body snatcher's occupation was gone, the minds of the living were relieved, and the dead slept securely in their resting graves. I am credibly informed, however, that the operation of the statute still leaves much to be desired both on account of the permissive character of its provisions, and the interpretation placed upon its clauses by authorities who control the disposal of the bodies of persons dying without relations, and that in respect to available amount of *matériel*, these times are relatively almost as hard for anatomical teachers as the bad old days of yore. But a remedy for this must be sought in a stricter carrying out of the intention of the Act, namely, to provide for medical students opportunities of becoming acquainted with the positions

¹³¹ *Life of Robert Knox*, p. 258.

¹³⁴ 2 and 3 William IV., cap. 75.

¹³² *Ibid.*, p. 200.

¹³³ *Ibid.*, p. 390.

Burke and Hare.

of the various structures upon which they will afterwards have to operate in order to save the lives or alleviate the sufferings of their injured and diseased fellow-creatures ¹³⁵

Even if, induced by this state of matters, a new Burke and Hare should arise with a view to a resumption of business, it is unlikely that the Medical Faculty could furnish another Knox to be their patron. "The sublime epoch of Burkism and Harism," so enthusiastically toasted by De Quincey's connoisseur, is as dead as Pharaoh or Queen Anne, and less susceptible of resurrection.

¹³⁵ See Note by Professor Arthur Robinson, Appendix V

LEADING DATES.

1827

29 November Burke and Hare sell to Dr Knox the body of the old pensioner.

•
1828

12 February Murder of the old woman from Gilmerton
 9 April Murder of Mary Paterson
 June Murder of the Irishwoman and her grandson
 24 „ Burke and M'Dougal visit Falkirk
 5-26 October Murder of Daft Jamie between these dates
 31 „ Murder of Mrs Docherty
 1 November Arrest of Burke and M'Dougal.
 2 „ Recovery of the body, the Hares arrested
 3 „ Judicial examination of the prisoners
 10 „ Burke and M'Dougal further examined before the Sheriff
 1 December Hare turns King's evidence
 8 „ Indictment served on Burke and M'Dougal.
 24 „ Trial of Burke and M'Dougal.
 25 „ Verdict and sentence
 26 „ M'Dougal released.

1829

3 January Official confession of Burke
 16 „ Petition by Daft Jamie's relatives for prosecution of Hare
 19 „ Mrs Hare released
 21 „ "Courant" confession of Burke
 26 „ Hearing on Bill of Advocation, Suspension and Liberation for Hare
 28 „ Execution of Burke
 29 „ Lecture on his body by Professor Monro.
 30 „ Public exhibition of Burke's body.
 2 February Advising on Bill of Advocation, prosecution of Hare disallowed Petition in connection with proposed action against Hare for assyhtment granted; Hare imprisoned
 5 „ Warrant withdrawn, Hare released
 6 „ Hare at Dumfries
 7 „ Confessions of Burke published
 11 „ Committee of Inquiry instituted.
 12 „ Riot at Dr Knox's house in Edinburgh.
 3 March Dr. Knox burnt in effigy at Portobello
 17 „ Dr Knox's letter to the Newspaper Press
 21 „ Report of Committee of Inquiry published.

THE TRIAL.

WEDNESDAY, 24TH DECEMBER, 1828.

The Court met at Ten o'clock.

Judges Present—

THE RIGHT HON. DAVID BOYLE (*Lord Justice-Clerk*).

LORD PITMILLY.

LORD MEADOWBANK.

LORD MACKENZIE

Counsel for the Crown—

SIR WILLIAM RAE, Bart., *Lord Advocate*

ARCHIBALD ALISON, ROBERT DUNDAS,
and ALEXANDER WOOD, Esqs, *Advocates-Depute*.

Agent—

MR. JAMES TYTLER, W S

Counsel for the Pannels—

For Burke.

SIR JAMES W MONCRIEFF, Bart.,
Dean of Faculty
PATRICK ROBERTSON.
DUNCAN M'NEILL.
DAVID MILNE.

For M'Dougal.

HENRY COCKBURN.
MARK NAPIER.
HUGH BRUCE.
GEORGE PATTON

Agent—

MR. JAMES BEVERIDGE, W.S., one of the Agents for the Poor.

Indictment.

CUM A JUSTICIARIA S D N Regis, Tenta in Nova Sessionis domo de Edinburgh, vicesimo quarto die Decembris, millesimo octingentesimo et vicesimo octavo, Per Honorabiles VIROS DAVIDEM BOYLE, armigerum, Dominum Justiciarium Clericum, DAVIDEM MONYPENNY DE PITMILLY, ALEXANDRUM MACONOCHE DE MEADOWBANK, et JOSHUAM HENRICUM MACKENZIE, armigerum, Dominos Commissionarios Justiciarie dict S D N. Regis

Curia legitime affirmata.

INTRAN WILLIAM BURKE and HELEN M'DOUGAL, both present prisoners in the Tolbooth of Edinburgh, Pannels

INDICTED and ACCUSED at the instance of Sir William Rae of St Catherine's, Baronet, His Majesty's Advocate for His Majesty's interest, of the crime of Murder in manner mentioned in the Indictment raised against them thereanent Bearing That *albeit* by the laws of this and every other well-governed realm, MURDER is a crime of an heinous nature, and severely punishable, *yet true it is and of verity* that you the said William Burke and Helen M'Dougal are both and each, or one or other of you, guilty of the said crime, actors or actor, or art and part *In so far as*, on one or other of the days between the 7th and the 16th days of April 1828, or on one or other of the days of that month, or of March immediately preceding, or of May immediately following, within the house in Gibb's Close, Canongate, Edinburgh, then and now or lately in the occupation of Constantine Burke, then and now or lately scavenger in the employment of the Edinburgh Police Establishment, you the said William Burke did wickedly and feloniously place or lay your body or person, or part thereof, over or upon the breast, or person, and face of Mary Paterson or Mitchell, then or recently before that time, or formerly, residing with Isabella Burnet or Worthington, then and now or lately residing in Leith Street, in or near Edinburgh, when she the said Mary Paterson or Mitchell was lying in the said house in a state of intoxication, and did, by the pressure thereof, and by covering her mouth and nose with your body or person, and forcibly compressing her throat with your hands, and forcibly keeping her down, notwithstanding her resistance, or in some other way to the prosecutor unknown, preventing her from breathing, suffocate or strangle her; and the said Mary Paterson or Mitchell was thus by the said means, or part thereof, or by some other means or violence, the particulars of which are to the prosecutor unknown, wickedly bereaved of life, and murdered by you the said William Burke; and thus you did with the wicked aforethought intent of disposing of, or selling the body of the said Mary Paterson or Mitchell, when so murdered, to a physician or surgeon, or some person in the employment of a physician or surgeon, as a subject for dissection, or with some other wicked and felonious intent or purpose to the prosecutor unknown. (2.) FURTHER, on one or other of the days between the 5th and 26th days of October 1828, or on one or other of the days of that month, or of September immediately preceding, or of November immediately following, within the

Burke and Hare.

house situated in Tanner's Close, Portsburgh, or Wester Portsburgh, in or near Edinburgh, then or now or lately in the occupation of William Haire or Hare, then and now or lately labourer, you the said William Burke did wickedly and feloniously attack and assault James Wilson, commonly called or known by the name of Daft Jamie, then or lately residing in the house of James Downie, then and now or lately porter, and then and now or lately residing in Stevenlaw's Close, High Street, Edinburgh, and did leap or throw yourself upon him, when the said James Wilson was lying in the said house, and he having sprung up you did struggle with him, and did bring him to the ground, and you did place or lay your body or person, or part thereof, over or upon the person or body and face of the said James Wilson, and did, by the pressure thereof, and by covering his mouth and nose with your person or body, and forcibly keeping him down, and compressing his mouth, nose, and throat, notwithstanding every resistance on his part, and thereby, or in some other manner to the prosecutor unknown, preventing him from breathing, suffocate or strangle him, and the said James Wilson was thus, by the said means, or part thereof, or by some other means or violence, the particulars of which are to the prosecutor unknown, wickedly bereaved of life and murdered by you the said William Burke, and this you did with the wicked aforethought intent of disposing of, or selling the body of the said James Wilson, when so murdered, to a physician or surgeon, or to some person in the employment of a physician or surgeon, as a subject for dissection, or with some other wicked and felonious intent or purpose to the prosecutor unknown. (3) FURTHER, on Friday, the 31st day of October 1828, or on one or other of the days of that month, or of September immediately preceding, or of November immediately following, within the house then or lately occupied by you the said William Burke, situated in that street of Portsburgh or Wester Portsburgh, in or near Edinburgh, which runs from the Grassmarket of Edinburgh to Main Point, in or near Edinburgh, and on the north side of the said street, and having an access thereto by a trance or passage entering from the street last above libelled, and having also an entrance from a court or back court on the north thereof, the name of which is to the prosecutor unknown, you the said William Burke and Helen M'Dougal did, both and each, or one or other of you, wickedly and feloniously place or lay your bodies or persons, or part thereof, or the body or person, or part thereof, of one or other of you, over or upon the person or body and face of Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, then or lately residing in the house of Roderick Stewart or Steuart, then and now or lately labourer, and then and now or lately residing in the Pleasance, in or near Edinburgh, when she the said Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty was lying on the ground, and did, by the pressure thereof, and by covering her mouth and the rest of her face with your bodies or persons, or the body or person of one or other of you, and by grasping her by the throat, and keeping her mouth and nostrils shut with your hands, and thereby, or in some other way to the prosecutor unknown, preventing her from breathing, suffocate or strangle her, and the said Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, was thus by the said means, or part thereof, or by some other means or violence, the particulars of which are to the prose-

Indictment.

cutor unknown, wickedly bereaved of life, and murdered by you the said William Burke, and you the said Helen M'Dougal, or one or other of you, and this you both and each, or one or other of you, did with the wicked aforethought intent of disposing of or selling the body of the said Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, when so murdered, to a physician or surgeon, or to some person in the employment of a physician or surgeon, as a subject for dissection, or with some other wicked and felonious intent or purpose to the prosecutor unknown. And you, the said William Burke, having been taken before George Tait, Esq, sheriff-substitute of the shire of Edinburgh, you did, in his presence, at Edinburgh, emit and subscribe five several declarations, of the dates respectively following, viz, the 3d, 10th, 19th, and 29th days of November, and 4th day of December 1828; and you the said Helen M'Dougal having been taken before the said sheriff-substitute, you did, in his presence at Edinburgh, emit two several declarations, one upon the 3d, and another upon the 10th days of November 1828, which declarations were each of them respectively subscribed in your presence by the said sheriff-substitute, you having declared that you could not write, which declarations being to be used in evidence against each of you by whom the same were respectively emitted, as also the skirt of a gown, as also a petticoat, as also a brass snuff-box, and a snuff-spoon; a black coat, a black waistcoat, a pair of moleskin trowsers, and a cotton handkerchief or neckcloth, to all of which sealed labels are now attached, being to be used in evidence against you the said William Burke; as also a coarse linen sheet, a coarse pillow-case, a dark printed cotton gown, a red striped cotton bed-gown, to which a sealed label is now attached, as also a wooden box, as also a plan entitled 'Plan of Houses in Wester Portsburgh and places adjacent,' and bearing to be dated 'Edinburgh, 20th November 1828,' and to be signed by James Bradwood, 22, Society, being all to be used in evidence against both and each of you the said William Burke and Helen M'Dougal, at your trial, will, for that purpose, be in due time lodged in the hands of the clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same; *all which*, or part thereof, being found proven by the verdict of an assize, or admitted by the respective judicial confessions of you the said William Burke and Helen M'Dougal, before the Lord Justice-General, Lord Justice-Clerk, and Lords Commissioners of Justiciary,—you the said William Burke and Helen M'Dougal *ought* to be punished with the pains of law, to deter others from committing the like crimes in all time coming

A. WOOD, A.D

List of Witnesses.

- 1 George Tait, Esq, sheriff-substitute of the shire of Edinburgh
- 2 Archibald Scott, procurator-fiscal of said shire
- 3 Richard John Moxey, now or lately clerk in the sheriff-clerk's office, Edinburgh.
- 4 Archibald M'Lucas, now or lately clerk in the sheriff-clerk's office, Edinburgh.

Burke and Hare.

- 5 Janet Brown, now or lately servant to, and residing with, Isabella Burnet, or Worthington, now or lately residing in Leith Street, in or near Edinburgh
- 6 The foresaid Isabella Burnet or Worthington
- 7 Elizabeth Graham or Burke, wife of Constantine Burke, now or lately scavenger in the employment of the Edinburgh Police, and now or lately residing in Gibb's Close, Canongate, Edinburgh
- 8 The foresaid Constantine Burke
- 9 Jean Anderson or Sutherland, wife of George Sutherland, now or lately silversmith, and now or lately residing in Middleton's Entry, Potterrow, Edinburgh
- 10 William Haire or Hare, present prisoner in the Tolbooth of Edinburgh.
- 11 Margaret Laird or Haire or Hare, wife of the foresaid William Haire or Hare, and present prisoner in the Tolbooth of Edinburgh
- 12 Jean Macdonald or Coghill, wife of Daniel Coghill, now or lately shoemaker, and now or lately residing in South St James' Street, in or near Edinburgh
- 13 Margaret McGregor, now or lately servant to, and residing with, John Clark, now or lately baker, and now or lately residing in Rose Street, in or near Edinburgh.
- 14 Richard Burke, son of, and now or lately residing with, the foresaid Constantine Burke
- 15 William Burke, son of, and now or lately residing with, the foresaid Constantine Burke
- 16 Janet Wilson or Downie, wife of James Downie, now or lately porter, and now or lately residing in Stevenlaw's Close, High Street, Edinburgh.
- 17 Mary Downie, daughter of, and now or lately residing with, the foresaid James Downie
- 18 William Cunningham, now or lately scavenger in the employment of the Edinburgh Police, and now or lately residing in Fairley's Entry, Cowgate, Edinburgh
- 19 George Barclay, now or lately tobacconist in North College Street, in or near Edinburgh
- 20 David Dalziel, now or lately copperplate printer, and now or lately residing with his father, George Dalziel, now or lately painter, and now or lately residing in North Foulis' Close, High Street, Edinburgh
- 21 Margaret Newbigging or Dalziel, wife of the foresaid David Dalziel.
- 22 Joseph McLean, now or lately tinsmith, and now or lately residing in Coul's Close, Canongate, Edinburgh
- 23 Andrew Farquharson, now or lately sheriff-officer in Edinburgh
- 24 George McFarlane, now or lately porter, and now or lately residing in Paterson's Close, Lawnmarket, Edinburgh
- 25 John Brogan, now or lately in the employment of John Vallance, now or lately carter, and now or lately residing in Semple Street, near Edinburgh
- 26 Janet Lawrie or Law, wife of Robert Law, now or lately currier, and now or lately residing in Portsburgh or Wester Portsburgh, in or near Edinburgh.

List of Witnesses.

- 27 Ann Black or Connoway, or Conway, wife of John Connoway, or Conway, now or lately labourer, and now or lately residing in Portsburgh or Wester Portsburgh aforesaid.
- 28 The foresaid John Connoway, or Conway
- 29 William Noble, now or lately apprentice to David Rymer, now or lately grocer and spirit-dealer in Portsburgh or Wester Portsburgh aforesaid
- 30 James Gray, now or lately labourer, and now or lately residing with Henry M'Donald, now or lately dealer in coals, and now or lately residing in the Grassmarket, Edinburgh
- 31 Ann M'Dougall or Gray, wife of the foresaid James Gray
- 32 Hugh Alston, now or lately grocer, and now or lately residing in Portsburgh of Wester Portsburgh aforesaid
- 33 Elizabeth Paterson, daughter of, and now or lately residing with, Isabella Smith or Paterson, now or lately residing in Portsburgh or Wester Portsburgh aforesaid
- 34 The foresaid Isabella Smith or Paterson
- 35 John M'Culloch, now or lately porter, and now or lately residing in Allison's Close, Cowgate, Edinburgh
- 36 John Fisher, now or lately one of the criminal officers of the Edinburgh police establishment.
- 37 John Findlay, now or lately one of the patrol of the Edinburgh police establishment
- 38 James Paterson, now or lately lieutenant of the Edinburgh police establishment.
- 39 James M'Nicol, now or lately one of the sergeants of the Edinburgh police establishment
- 40 Mary Stewart or Stuart, wife of Roderick Stewart or Stuart, now or lately labourer, and now or lately residing in the Pleasance, near Edinburgh
- 41 The foresaid Roderick Stewart or Stuart
- 42 Charles M'Lauchlan, now or lately shoemaker, and now or lately residing with the foresaid Roderick Stewart or Stuart.
- 43 Elizabeth Main, now or lately servant to the foresaid William Haire or Hare.
- 44 Robert Knox, M D., lecturer on Anatomy, now or lately residing in Newington Place, near Edinburgh
- 45 David Paterson, now or lately keeper of the Museum belonging to the foresaid Dr Robert Knox, and now or lately residing in Portsburgh or Wester Portsburgh aforesaid, with his mother the foresaid Isabella Smith or Paterson.
- 46 Thomas Wharton Jones, now or lately surgeon, and now or lately residing in West Circus Place, in or near Edinburgh, with his mother Margaret Cockburn, or Jones
- 47 William Ferguson, now or lately surgeon, and now or lately residing in Charles Street, in or near Edinburgh, with his brother John Ferguson, now or lately writer
- 48 Alexander Miller, now or lately surgeon, and now or lately residing in the lodgings of Elizabeth Anderson or Montgomery, now or lately residing in Clerk Street, in or near Edinburgh.

Burke and Hare.

- 49 Robert Christison, M D , now or lately professor of Medical Jurisprudence in the University of Edinburgh
50 William Pulteney Alison, M D , now or lately Professor of the Theory of Physic in the University of Edinburgh
51 William Newbigging, now or lately surgeon, and now or lately residing in St Andrew Square, Edinburgh
52 Alexander Black, now or lately surgeon to the Edinburgh police establishment
53 James Braidwood, now or lately builder, and master of fire engines on the Edinburgh police establishment
54 Alexander Maclean, now or lately sheriff-officer in Edinburgh
55 James Evans, student of medicine, now or lately residing with Mr James Moir, surgeon, residing in Teviot Row, in or near Edinburgh.
A WOOD, A.D.
-

List of Assize—24th December, 1828.

CITY OF EDINBURGH

Special Jurors

James Trench, builder, London Street
John Paton, builder, Great King Street
Nicol Allan, manager of the Hercules Insurance Company, Heriot Bridge
Charles Ferrier, accountant, Northumberland Street
John Ramsay, merchant, residing in Prince's Street
William Bonai, banker, Abercromby Place
Peter M'Gregor, merchant, Castle Street
Thomas Storrar, baker, Mansfield Place.

Common Jurors

Robert Jeffrey, engraver, Milne's Square
John Letham, baker, Pitt Street
Alexander Thomson, grocer, West Bow
David Hunter, ironmonger, Jamaica Street
James Meliss, merchant, Blair Street
Robert Walker, tailor, Broughton Street
William Robertson, cooper, Bank Street.
~~George~~ George Hogarth, jeweller, Milne's Square
Richard Jones, tailor, Waterloo Place.
Thomas Nelson, bookseller, West Bow.
George Drummond, builder, Scotland Street.
John Davidson, tailor, Greenside Street
Robert Steele, confectioner, Hanover Street
William Simpson, poulterer, Hunter Square
William M'Kay, cabinetmaker, South Charlotte Street
George Andrew Lutenor, portrait painter, Dundas Street.

List of Assize.

TOWN OF LEITH.

Special Jurors

Charles White, merchant, Charlotte Street
Abram Newton, merchant, James Place

Common Jurors

John M'Fee, merchant, James Place
David Brash, grocer, Coalhill
Thomas Barker, brewer, Yardheads
Thomas Heriot Weir, baker, Kirkgate

COUNTY OF EDINBURGH.

Special Jurors

Sir John Hamilton Dalrymple of Cousland and Falla, Baronet, Oxen-
ford Castle
William Hunter, farmer, Poltonhall

Common Jurors

James Banks, agent, Cassels Place, Leith Walk
Charles Marshall, meal dealer, Marshall's Place, Stockbridge.
George Ritchie, merchant, Cassels Place, Leith Walk.
James Allan, wine merchant, Hope Street, Leith Walk

COUNTY OF LINLITHGOW.

Special Juror

Andrew Vannan, distiller, Borrowstounness

Common Jurors

Robert Arkley, baker, Borrowstounness.
James Ainslie, grocer there.
Thomas Boag, shipbuilder there.

COUNTY OF HADDINGTON.

Special Jurors.

John Hutton, residing at Gifford Vale.
Robert Ainslie of Redcoal

Common Jurors.

William Bell, grocer, Dunbar.
Henry Fenwick, grocer there.
Alexander Sanderson, grocer there

Burke and Hare.

Wednesday, 24th December, 1828.

The diet having been called,

The LORD JUSTICE-CLERK—William Burke, and Helen M'Dougal, pay attention to the indictment that is now to be read against you

Mr ROBERTSON—It is unnecessary to read this libel at present We have an objection to this style of proceeding—an objection against that libel being proceeded in in this shape, and it is proper to state the objection to it at present.

LORD JUSTICE-CLERK—I am quite unaccustomed to this mode of primary objection to an indictment being read. The objection to the relevancy of the indictment is the proper time to state it, and not at this time

Mr. ROBERTSON—It is not necessary that it should be previously read, by the recent statute

LORD JUSTICE-CLERK—We have found very little advantage from not reading indictments The proper way is to read them, unless they are uncommonly laid.

Mr COCKBURN—It is not necessary to be read We object to the reading it, as it prejudices the prisoners We think that the prisoners would be prejudiced by reading that which the Court will ultimately find no legal part of the libel

LORD MEADOWBANK—What I hesitate about at all is against interfering with the discretion of the Court

Mr. ROBERTSON—If the Court wish the indictment read, we do not mean to press the matter farther.

LORD JUSTICE-CLERK—I think that everything should be read. William Burke, and Helen M'Dougal, stand up and hear the indictment now to be read.

The libel having been read over,

Mr DUNCAN M'NEILL, for the pannel William Burke, stated in defence, that the pannel submits that he is not bound to plead to, or to be tried upon, a libel, which not only charges him with three unconnected murders, committed each at a different time, and at a different place, but also combines his trial with that of another pannel, who is not even alleged to have had any concern with two of the offences of which he is accused Such an accumulation of offences and pannels is contrary to the general and the better practice of the Court, it is inconsistent with the right principle, and, indeed, so far as the pannel can discover, is altogether unprecedented, it is ~~totally~~ unnecessary for the ends of public justice, and greatly distracts and prejudices the accused in their defence It is therefore submitted, that the libel is completely vitiated by this accumulation, and cannot be maintained as containing a proper criminal charge. On the merits of the case, the pannel has only to state that he is not guilty, and that he rests his defence on a denial of the facts set forth in the libel

Mr. M'Neill also stated in defence of the pannel Helen M'Dougal, that if it shall be decided that the prisoner is obliged to answer to this indictment at all, her answer to it is, that she is not guilty, and that the Prosecutor



BURKE'S HOUSE FROM THE BACK COURT.

A Burke's Window

B Back entrance where the Bodies were brought out

Back View of Burke's House.

From an Etching by Walter G. 18

Defences.

cannot prove the facts on which his charge rests. But she humbly submits that she is not bound to plead to it. She is accused of one murder committed in October, 1828, in a house in Portsburgh, and of no other offence. Yet she is placed in an indictment along with a different person, who is accused of other two murders, each of them committed at a different time, and at a different place,—it not being alleged that she had any connexion with either of these crimes. This accumulation of pannels and of offences is not necessary for public justice, and exposes the accused to intolerable prejudice, and is not warranted, so far as can be ascertained, even by a single precedent.

Debate on the Relevancy.

Mr ROBERTSON—My Lords, in support of the defences which have now been read to your Lordships, I must direct the attention of the Court, as shortly as I can, to the grounds upon which we conceive that the trial upon this indictment should not be allowed to proceed. In the indictment there are named two prisoners, William Burke and Helen M'Dougal, which two prisoners are not stated on the face of the indictment to have had any connexion with one another. It is simply stated, that there are two separate and distinct prisoners to be tried for murder, under one indictment. My Lords, the major proposition of the indictment contains a charge of murder, laid simply without any specific aggravation whatever,—then the minor proposition contains three charges for murder, totally unconnected with one another. The first charge is against William Burke alone, of a murder said to have been committed in the month of April, or the month of March preceding, or May immediately following, in a certain place of the Canon-gate of Edinburgh. It is not stated that Burke had any accomplices in this murder. He is the sole person charged with that specific offence. Then, my Lords, after describing the manner in which the murder is alleged to have been committed, it is stated, in the end of the charge, that this was done by the prisoner, “with the wicked aforethought intent of disposing of, or selling the body of the said Mary Paterson, or Mitchell, when so murdered, to a physician, or surgeon, or some person in the employment of a physician, or surgeon, as a subject for dissection, or with some other wicked and felonious intent, to the prosecutor unknown.” Thus, while, on the one hand, as your Lordships will recollect, there is no specific aggravation stated in the major proposition,—so, on the other, when the prosecutor comes to describe the intent with which the murder was committed, he does not confine himself to one species of intent, but states, that the murder was committed either for the purpose of giving the body over to a physician, or with some other felonious intention. Then, my Lords, the second charge contained in the minor proposition, is of another murder, alleged to have been committed in the month of October, at the distance of several months from the former charge. It is stated to have taken place in Tanner's Close, which is situated either in Edinburgh, or Wester Portsburgh. He alone is charged with that offence, and then the intent is laid precisely as in the former charge,—viz., selling the body to a physician, or surgeon, for the purposes of dissection, or some other purpose, to the prosecutor

Burke and Hare.

Mr Robertson

unknown Now, my Lords, the third charge in the minor proposition is, murder committed in a different place in Portsburgh, on another day, in the month of October, or, in the usual style, on some other day in the month of September immediately preceding, or November following In this last charge of the indictment, William Burke and Helen M'Dougal are both included, and after describing the way in which the murder was committed, the intent is laid precisely as in the former charge Thus, your Lordships see, that there are three murders charged against the prisoners,—one against M'Dougal, and two against Burke, at different times, and different places, without any connexion betwixt these offences Then there are libelled on five declarations alleged to have been emitted by Burke,—two declarations alleged to have been emitted by the prisoner M'Dougal; and there are farther libelled on eight different articles, against Burke, and six additional articles against Burke and M'Dougal There is, finally, a list of witnesses to the amount of fifty-five in number

Now, my Lords, the question is, whether these charges are consistent with the practice of this Court, or the principles of law, in regard to the cumulation of actions, and with that sound and proper discretion which, it cannot be denied on the other side of the Bar, the Court are bound to exercise in all cases of this description? In considering that question, the first and most material point the Court have to attend to, is, whether the prisoner suffers any prejudice from this mode of proceeding? Whether that prejudice is to such an extent as to justify your Lordships in quashing the whole of the indictment, or merely in selecting a part of the indictment for trial at one time, or in separating the case of one prisoner from the other, must depend in a great measure on the degree of prejudice which the prisoners may be presumed to suffer? But the first point which your Lordships have to consider, is, whether the prisoners suffer *any prejudice* by this mode of procedure? Your Lordships will be pleased to attend to the fact, that it is not charged in the indictment that there is any natural connexion betwixt the three offences.—there is no connexion in law,—no connexion charged,—and there is truly no connexion in any way whatever. With the exception, that the mode of murder, in the three cases, is described in the indictment as somewhat similar; and with the further exception of the intent I have described, there is no pretence for saying that there was any connexion between these crimes But, although the intent is thus laid in this case, it is not laid *absolutely* It is either with the intent of giving the bodies for dissection, or, with some other intent, to the prosecutor unknown Now, my Lords, it is not necessary for the prosecutor to prove, in the case of any one murder, the intent to hand over the bodies for dissection. He may, however, prove this intent as to one, and as to the other two, he may prove that they were done for different ends, for gratifying private revenge, for the purpose of robbery, or in any other way Nay, my Lords, there is nothing in common charged as applicable to the three cases,—there is no connexion between them, either in time or place, and no specific charge, by which the prosecutor is tied down to prove any natural connexion whatever among them. It is not said that they were committed in the course of any conspiracy between the prisoners, or were the parts of one consecutive or following offence. They are laid simply

Debate on Relevancy.

Mr Robertson

and exclusively as three different offences, without connexion, and without any species of aggravation whatever. Now, my Lords, the whole train of this proceeding is quite unnecessary for the ends of justice. The crime of murder is different from all other crimes. When followed by a conviction, it *inevitably* leads to the highest punishment of the law. We shall see immediately that there is a cumulation of charges allowed in cases of different kinds;—but I pray your Lordships to keep in mind, that murder is a crime of a peculiar description, and not to be looked to as a mere ordinary offence, of the same general character as those usually charged in the indictments of this Court. Therefore, this being the general state of the matter, let us first look to the case as applicable to the prisoner, William Burke.

The mere fact of charging, on the face of this indictment, three unconnected murders, is of itself sufficient to create a prejudice against the prisoner. If this case were to go on to trial, your Lordships would, no doubt, direct the Jury that specific and sufficient evidence must be brought forward as to each specific charge. But although the Court were thus to address the Jury, it would be in vain to say that any Jury sitting in that box could act upon that distinction. They would necessarily borrow some of the evidence in one transaction, and carry it to another. Although the law might separate the charges, it would be impossible for the minds of the Jury to separate them, and although one murder was proved, and the other not, as the facts could not be separated, the Jury would naturally convict the prisoner of the whole. Any light thrown on the murder proved, would be carried to the one not proved. Nay, although neither the one nor the other were proved, yet it might be held, that, on the whole of the transaction, there was evidence against one or other of the prisoners. This is a prejudice arising from the fact of the murders being connected in one indictment, and it is a prejudice against which it is necessary effectually to guard, in looking specially to the case of murder. I must further observe, that in the indictment against Burke himself,—suppose it was possible for the Jury to banish the consideration to which I have referred,—there are three murders charged against him, with *fifty-five* witnesses. We have then seven declarations, five by him, and two by the woman. Although it is quite clear in law, that one set of declarations by one prisoner cannot be used in evidence against another prisoner, yet here arises another important consideration. It is necessary, in point of law, to have them separated, but it is impossible, in fact, that the Jury, under such circumstances, and in so protracted a trial, could separate them. They would unavoidably mix up the whole of these declarations, and mass them together, although the Judge might direct the Jury not to do so. Substantially it is impossible for them to come to such a separation as is essential to the course of justice.

Look next at the case of the other prisoner. The prejudice is still stronger against her. This woman is charged with having committed a murder in October, in company with William Burke, with whom she had no connexion at all. She is actually brought to trial on that charge in an indictment, combining two other charges against the other prisoner, with whom she has no connexion whatever. Where is this to stop? If the public prosecutor may do this, look to the danger of such a proceeding. I am

Burke and Hare.

Mr Robertson

now talking of a grievous case, but if this mode of proceeding were sanctioned, he might go still further. He might combine ten murders in one indictment, in the case of different prisoners—he might combine ten different offences against ten different prisoners, in ten different counties. Therefore, I submit it is plain there must be some limitation, and I wish to know where this is to end, if the Court may not interfere? I say, here are two murders with which she has no concern. The Jury may mix up the whole together against her, and convict, from circumstances connected with the other murders, with which she is not charged, and as to which she is not put on her defence. Your Lordships see, that in the end of the indictment, there are eight different articles libelled on against Burke, and six against M'Dougal. Just take the first of these articles,—the skirt of a gown. The prosecutor libels upon this against William Burke alone, and it cannot be produced against Helen M'Dougal. But in order to establish the guilt of Burke, the prosecutor, in the *first* place, connects Helen M'Dougal with William Burke, and then he traces the gown into the possession of Helen M'Dougal. It is most evident that the first and second murder can be no evidence of the third. But he calls witnesses to prove that this was the gown of Mary Paterson, the first person murdered, which is thus traced into the hands of Helen M'Dougal. The witness adduced then swears that it is the gown of Mrs Campbell, and not of Mary Paterson, which is thus adduced against M'Dougal, as conclusive evidence, without being libelled on against her at all. I know your Lordships would say that this must be struck out of the notes, as not being evidence against Helen M'Dougal, but it could not be struck out of the minds of the Jury. The prisoner, in this way, would also be put off her guard. She saw on the face of the indictment nothing about a gown libelled on against her, and she would not be under the necessity of preparing evidence to show, that though it was the gown of Campbell, yet she came by it fairly and honestly. So you have an article of evidence adduced against the prisoner not libelled upon, and the prisoner put off her guard with regard to the evidence to be produced against her. Therefore, I submit to your Lordships, that a still stronger prejudice exists against her than even against the other prisoner.

Now, my Lords, if such be the case, the question is, Whether this be a legal proceeding? If I have satisfied your Lordships that there is a prejudice against one or other of the prisoners at the bar, I submit that this is of itself sufficient. It is the undoubted law of this country, that every prisoner is entitled to the various defences which his own particular case may offer; and the more atrocious the charge against him is, the greater ought the care of the Court to be, that he shall not suffer prejudice from the way in which the charges are brought forward. Let us look then to the authorities which have regulated the practice of the Court on this subject. So far as we can discover from the records of this Court, this is the *first* case in which it was ever attempted, on the part of the prosecutor, to charge, in one libel, three murders, committed at different times. There may be cases where three persons were slain at the same time, as in the case of the Aberdeen Riots, from one discharge of musketry, or there may be the case of a person poisoning a whole family, where, as Mr Hume says, the whole may be charged in one libel, as being part of one foul and nefarious story.

Debate on Relevancy.

Mr. Robertson

If a prisoner suffers a prejudice there, it is only from the number of crimes committed by himself at one time, and he cannot complain. But I say there is no accumulation of crimes charged as committed at *one time* here, but three unconnected murders, committed at different times and places, charged against one prisoner, who is combined with the case of another prisoner, charged with one only of these murders. If there be any authority for this, it is incumbent on the prosecutor to show it. Let us see the cases that come nearest to this. It is not a little remarkable, that in the work of Sir George Mackenzie,—one who is little suspected of being too favourable to the prisoner,—although he states it was the practice of his day, to have an accumulation of offences in one indictment, and that this was not considered illegal, yet he strongly reprobates this as inconsistent with the true principles of the law of Scotland. I read from Part II, title 19, sect. 7. He refers to the *quoniam attachamenta*. He states, that “a person accused, was not obliged to answer, of old, but for one crime in one day, except there were several pursuers—*quoniam attachamenta*, cap. 65, by which accumulation of crimes was expressly unlawful, *sed hodie aliter obtinet*, for now there is nothing more ordinary, than to see five or six crimes in one summons or indictment, and to see one accuser pursue several summonses. And yet, seeing crimes are of so great consequence to the defender, and are of so great intricacy, it appears *most unreasonable that a defender should be burdened with more than one defence at once*, and it appears that accumulation of crimes is intended *either to less the fame of the defender, or to distract him from his defence*.” I say, my Lords, here is brought out, in the clearest terms, the just and impartial principle, that the accumulation of offences is burdensome and offensive to the pannel, and that he is not called upon to defend himself against more than one crime at one time. The accumulation of charges was thus considered an injury even in Sir George Mackenzie’s time, as tending to distract the pannel in his defence. Such being the oldest authority, let us look to the principles laid down by Mr. Hume. Mr. Hume treats of the accumulation of crimes, under three different heads. In the *first* place, he mentions the accumulation of various crimes of the same sort. In the *second* place, he mentions the combination of different crimes, where they are part of the same transaction. Then, *thirdly*, the combination of several unconnected crimes against several prisoners. In the *first* place, your Lordships bearing always in mind, that we have here three unconnected crimes in the same indictment, and two unconnected prisoners—let us see what is said by the learned author. I read from page 166 of the 2d vol.—“In the *first* place,” he says, “the competency never has been disputed, of charging in one libel any number of criminal acts, if they are all of one name and species, or even of one class and general description; so as to cohere in this point of view, and stamp a character on the pannel, as one who is an habitual and an irreclaimable offender in this sort,” &c. It is quite plain, that the author does not here refer to murder at all; for he lays down the general doctrine, and recognizes it as affording a sort of “*habitus and repute*.” In murder, I do think that one act is quite sufficient of itself; and it never could be meant that it is competent to accumulate charges of this kind, in order to ascertain whether the murderer was, in the language of our author,

Burke and Hare.

Mr Robertson

an "*irreclaimable offender*" in that crime. Therefore, when he treats of this sort of accumulation, the cases which he puts are acts of stealing, housebreaking, or the like "Thus, James Inglis was tried on one libel, for three acts of horse-stealing, and one act of pulling and stealing wool, William Pickwith, for three acts of highway robbery, Thomas Thomson, for three acts of housebreaking, and Walter Ross, for two acts of pocket-picking"—p 166 All cases of housebreaking and theft are crimes of a totally different description from the present It may be right and proper, in order to have the law administered in a salutary manner, to have small offences brought out at once, but not in crimes of this description. No doubt housebreaking is a capital offence, but it is not of the same kind as murder, and does not lead so certainly to a capital punishment It is quite plain that this is the principle by which he illustrates his view of the matter, for he refers to two or more acts of pocket-picking They bear no resemblance to a case like the present He quotes, under this passage, no cases of murder, and he confines the illustration to those I have mentioned

Now see, in the *next* place, what Mr Hume states as to the combination of connected crimes Here he quotes several cases—some very old He treats of one of robbery and murder—robbing a post-boy, and murdering him. There was no harm in putting those two charges into one indictment. They were part of the same foul and nefarious transaction, he states, that though the charges may be of different crimes, they are still part of one foul and nefarious transaction, and so may be tied together But, my Lords, in the present case, there is no connexion in the crimes, and it is not stated that they were part of the same foul and nefarious story,—or that the prisoners were connected with one another,—or that the crimes were planned and accomplished with one and the same purpose;—Therefore, that class of cases are not connected with the present The learned author goes on to a more complicated kind,—as, for instance, a case of theft, murder, and robbery, committed against various persons, in different years Then he proceeds to quote cases in 1696 and 1712, some of which I am sure my learned friends, instead of following, in the present day, would hold up as a beacon to avoid. In one case, there were "ten different species of crime,—namely, fire-raising,—attempts and threats to raise fire,—attempts to poison,—theft and depredation,—reset of theft,—the harbouring, out-hounding, and maintaining of thieves and robbers,—sorning,—and levying of black-mail,—and the killing and eating of other people's sheep Under which different heads he was charged with a variety of separate acts, to the number of twenty, committed against sundry persons, from 1720 to 1726, and many of them but loosely laid in the libel The Lords thought it proper to restrict the trial to the more special charges, and those of the higher order, viz , the fire-raising, the attempts and threats to raise fire, and the attempt to poison"—p. 168 I am sure such a charge as this would not be followed in the present day Therefore, I quote that case, in order to show your Lordships that it does not come within the principle Mr Hume lays down as to the case of crimes limited to one person, and it is for your Lordships to say, whether or not, in other respects, this is a case to be followed in the present instance Even here some of the charges were

Debate on Relevancy.

Mr Robertson

passed from. In like manner, in other cases, when they find such accumulations to be oppressive, they proceed to the trial of as many of the articles as they can overtake, and dispatch them. I may mention to your Lordships that there is a case in 1784, where the Lord Advocate did depart from several of the charges.

I may next call your Lordships' attention to what Mr. Hume says under the third head of accumulation against several persons. I have already stated to your Lordships, that where any prejudice exists in the minds of the Jury in the case of one prisoner, he is entitled to the remedy of separation. But it is plain Mr. Hume considers the union of several prisoners charged with different crimes, to be illegal. Observe what he says in regard to several prisoners charged in the same libel with several unconnected crimes. It is quite true that the learned author puts a case, John for murder, James for theft, and George for forgery, which he says is incompetent. But I ask your Lordships, would it not make any difference in principle, that John should be accused of one murder, and James of another, in the same indictment, in place of John being accused of murder, and James of theft? The last would not appear to me to be such a strong proceeding as the former, though Mr. Hume says it is illegal—*p* 171.

Mr. Hume next quotes the case, in 1784, where there were four prisoners, to which I already alluded. Two of them were charged with a riot on the 4th of June, and the other two for another on the 7th of "the same month. The charges in the libel were here so far distinct, as no one of the pannels was accused of being accessory to both tumults, but to one of them only. In consequence, at calling the libel, and though no objection had been moved, the Lord Advocate represented to the Court, that the form of the charge appeared to him to be, in this respect, improper, and he therefore craved permission to desert the diet, as to the riot of the 7th of June, and the two persons charged therewith, which was allowed accordingly"—*p* 171. There the Lord Advocate thought it his duty to pass from one of the charges, and, in the *first* place, proceeded with the others. I know Mr. Hume says, that as our law stood formerly, the public prosecutor was warranted by the practice to have proceeded. But I pray your Lordships to observe, that this was done in 1784. And then, in what way does the learned author describe the cases? He quotes a set of cases in 1696, 1717, 1718, and one in 1783. What sort of cases are these? The oldest one is in 1696, viz.—"Patrick and James Faa, father and son, where the libel charged both pannels with a murder and a forgery, and the father only with several other crimes." And then one in 1717, where certain ministers were prosecuted on the same statute, for entering into their respective kirks, viz.—"Alexander Robertson, and seven persons more, all of them Episcopal ministers, who were prosecuted on the same statute, and for the same *sort* of crime, of which they had severally been guilty, by intruding into their respective kirks, and exercising the pastoral functions there, after lawful sentence of deposition. The case of George Fairly, and two persons more, indicted on the toleration-act, and the other laws in that behalf, for officiating as Episcopal ministers, without recording their letters of orders, or praying for the King. The like in the case of Alexander Robertson, and five others, indicted for officiating as Episcopal pastors,

Burke and Hare.

Mr. Robertson

without having duly qualified and complied in terms of the statutes, and for leasing-making, in praying for the Pretender, either directly or in equivocal terms, at different times and places. Further, the libel, in this case, bears a separate charge against Robertson alone, for drinking the Pretender's health, a charge against William Duguid alone, for clandestine marriage, and a charge against four of the six pannels, for violently and riotously taking possession of a church. All which articles were remitted to an assize along with the others, probably because those several offences agreed in this circumstance, that they *all savoured of Jacobitism and non-conformity*, or were injurious to the discipline of the church, and were imputed to persons of one class or calling. The case of David Strang and William Wylie, is another instance of the like character. The libel here went to trial against Wylie, for three acts of clandestine marriage, and against Strang, for one irregularity of the same sort, which was quite unconnected with the others. A strenuous opposition had been made to it, on the part of the pannels"—
p 172

I do not think any of these last were crimes of a very atrocious nature. A charge of three acts of murder is very different from a charge of three acts of *non-conformity*. It savours of something worse than Jacobitism. But there are none of these cases subsequent to 1784,—nothing to show why the prosecutor ought to have proceeded with one set of prisoners, without going on with the other. The only thing mentioned by Mr. Hume, which could have justified a contrary course, was these old cases. There are some others, but it is unnecessary to refer to them, as they are all of the same description. He says, that in later times, instances are still to be met with, though not so strong or so numerous. Then, he quotes the case of Clark, Calder, and Donaldson, "where the indictment was for one act of shopbreaking, in which all three were concerned,—and for another done by Calder and Donaldson only. But both shops were situated in the same town, and were broken about the same time, and the three pannels were all of them soldiers,—Clark and Donaldson in the same regiment and company. It appeared too in evidence, though not mentioned in the libel, that they were in a course of shopbreaking, and sharing their profits. For these reasons, the Court repelled an objection which was stated to the libel"—p 173. Next, he quotes a case where there are two persons engaged in one act of housebreaking,—and another in another act of the same kind,—but he quotes no cases of murder. Even in the case of the housebreaking referred to, there was a clear connexion. It is thus stated:—"The like plea was urged, but with as little success, in the trial of Archibald Stewart and Charles Gordon. Stewart was charged with three acts of housebreaking alone in Edinburgh, and Gordon with resetting the stolen goods on these several occasions. And Stewart was further charged with one act of housebreaking alone at Nidpath-Castle, in the county of Peebles; in which instance, the spoil had not come into Gordon's hands. But it was related in the libel, that Gordon was married to Stewart's sister, and that both were habited and reputed to be thieves; and it appeared from this train of resetting the booty made by Stewart, that Gordon was under a compact to assist him in his thefts"—p. 173. So here they were charged in the libel, as having a connexion with one another; and although they

Debate on Relevancy.

Mr Robertson

were not connected in the last act of housebreaking, they were connected in being habit and reputed thieves, and concerned in a general system of depredation. But here we have a case totally different from any which can be brought forward on the other side. Here there are charges without any connexion, and prisoners without any connexion, and yet they are charged conjunctly in one indictment. Therefore, to obviate all prejudices in the minds of the Jury, the Court are entitled to give such remedy as they think fit, under all the circumstances. I may mention another class of cases, where it is common for two prisoners, although charged together, to be separated the one from the other. Such a course is always followed, where the one may give evidence on behalf of the other. This has been frequently done. Your Lordships will remember the case of *Suiridge and Demsie*. Therefore, we go back to the great principles which are laid down in the emphatic words of Sir George Mackenzie, viz —“It is unreasonable that a defender shall be burthened with more than one defence at once, or distracted in his defence.” That is the principle which runs through all our decisions,—and I must take the liberty of saying, that if there was ever a case where a sound discretion would be exercised in separating the charges, it is the present. The very circumstance of there being murder charged here, is of itself sufficient to justify the course. But there are three murders charged with one intent, which is stated, although not stated absolutely; and, although the public prosecutor was not bound to state any intent at all, he has introduced that species of *intent*. Yet, he has been pleased to do so, when it is a matter of public notoriety, that the minds of men are excited in an unusual degree upon this very subject. God forbid that I should suppose that this would prejudice your Lordships, or the respectable Jury that is to try this case. But it is a circumstance which your Lordships cannot overlook, and I say that no jury should be impannelled under an indictment calculated to awaken such prejudices. It is but fair to the prisoners, and necessary for the administration of public justice at large, that they should be tried in a cool and deliberate manner, not upon the three charges in one indictment, but upon one charge alone. This is not a case where your Lordships are now to make a precedent diametrically opposite to the humane principles of the law of Scotland, contrary to the more ancient practice of our law, and contrary to the better practice of the present time.

Finally, I am aware that it is not usual to refer your Lordships to English authorities in this Court,—I am aware that your Lordships are to look to the law of Scotland; but I hope I am not detracting from the authority of your Lordships when I refer you to that law. It surely cannot be wrong to ascertain how those persons would be dealt with in the other end of the island,—and there I understand the practice is uniform,—not to combine two felonies against one prisoner in the same indictment. I see it is laid down by Lord Ellenborough, in a case which was tried in 1809, a case of various acts of fraud. There the counsel for the prisoner took an objection to the charge.—Lord Ellenborough says:—“It is usual in felonies, for the Judge, in his discretion, to call upon the counsel for the prosecution to select one felony, and to confine themselves to that.” And, accordingly, Mr. Chitty says distinctly, at page 252, vol. i, “In cases of

Burke and Hare.

Mr Robertson

Felony, no more than one distinct offence or criminal transaction at one time should regularly be charged upon the prisoner in one indictment." And, if more are charged, the Court will quash the indictment.—Observe the reason, "lest it should confound the prisoner in his defence, or prejudice him in his challenge to the Jury." These are cases where one prisoner will not be charged with many crimes; and the principle is the same which guides our practice,—namely, the prisoner would be prejudiced in his defence, by an accumulation of offences, although, in point of law, they may be combined in one indictment, the Court will quash the indictment, lest the prisoner should suffer in his defence. My Lords, in addition to this, Mr Chitty points out, that it may prejudice the pannel in the choice of the Jury. The same applies here. If the charges had been separated, we would have had twenty challenges. If they are not separated, we are limited in our number of challenges. I do not say there are objections to the respectable Jury, with whose names we are furnished, but there might be,—and we say we are deprived of our rights and privileges. When your Lordships look, then, at this case, in all the aspects I have set before you—when you see that there are accumulated and combined charges against different prisoners—when you see the atrocious nature of these charges, the number of the witnesses, the declarations, and the number of the articles libelled,—and when you see the humane and salutary principles of our law, and the practice of this Court,—your Lordships will not be inclined to form a precedent, which, in the *first* place, would be injurious to the law of the country, and, in the *next* place, would be injurious to the unhappy persons now brought to this bar.

LORD ADVOCATE—My Lord Justice-Clerk, your Lordship has heard these objections stated, with that talent and zeal which is ever exhibited by my honourable and learned friend, when he appears, as on the present occasion, gratuitously to defend persons accused. But when the objections which have been stated are looked at in a legal point of view, and the authorities on which they rest are considered, I am persuaded that you will concur with me in thinking that they are entirely unfounded. It appears to me that my learned friend has mixed two objections which should be considered separately. The first objection relates to the bringing two prisoners to trial at the bar of this Court, upon one indictment,—the other, with charging one individual, in the same indictment, with three distinct and separate acts of murder. Now, my Lord, I mean to deal with these separately, and I shall deal very shortly ~~un~~need with the first. This woman is charged in this indictment, as having been guilty of the crime of murder, along with the man, in one of the three instances charged, and the libel accordingly, after narrating the two preceding acts, charges her as joint actor in the third. I think I could completely defend that proceeding, and show that it is sanctioned by the law of the country, and by numerous precedents. But I state to your Lordships, my object in putting her in that indictment was, that she might derive advantage from being so placed. I will not detain your Lordships, by detailing those advantages, which must be obvious to all, further than to notice, that if I had charged her in a separate indictment, and had tried

Debate on Relevancy.

Lord Advocate

the man *first*, and afterwards the woman; adducing against her the same, or nearly the same evidence, which had been previously adduced against Burke, she could not have come here to this bar, in the same unprejudiced state, after the public had thus heard the evidence against her, which she would now appear in, if the case, as against her, was to go to proof. I think that that prisoner would have had good reason to complain of the public prosecutor, if he had acted in the way which my learned friend recommends, by first leading evidence in the trial of Burke, as against her, and then bringing her to that bar, and repeating the same evidence a second time. In that situation, I thought it my duty, in justice to her, that she should appear included in this indictment. But she, my Lord, makes the objection, she says that she will be prejudiced. God forbid, that any person holding the situation I do, should do any thing to prejudice a prisoner on trial. The very contrary motives guided my conduct in framing this indictment in the way I have done. The question is now reduced to one of time and of trouble, for, if I do not proceed against her to-day, she will be proceeded against ten days hence. In such circumstances, I shall certainly not insist now on that woman's being tried on this indictment. I shall proceed against her alone, since she now says, that being tried on this indictment, will prejudice her cause. But if she shall suffer prejudice from the evidence in Burke's trial going abroad, let it then be remembered it is not my fault. She and her Counsel must look to that—it is their proceeding, not mine.

As to the second objection, whether or not I am entitled now to go to proof on the three charges here exhibited, or shall proceed *separatim*, I am aware that this is matter of discretion with the Court. In so far, however, as depends upon me, I declare that I will not consent to this being dealt with in the last of these modes. No motive will induce me, for one moment, to listen to any attempt to smother this case, to tie me down to try one single charge, instead of all the three. If I had confined myself to one of those charges,—if I had served the prisoner with three indictments, and put the pannel to the hardship of appearing three times at that bar, I would have done one of the severest acts that the annals of this Court could show. I am told that the mind of the public is excited, if so, are they not entitled to know, from the first to the last of this case? and is it not my duty to go through the whole of these charges? I would be condemned by the country if I did not, and what to me is worse, I should deserve it; and such being the result of my determination, I shall now submit to your Lordships the grounds upon which I conceive the objection must be repelled.

This indictment charges William Burke with three separate acts of murder. It charges him, in the major proposition, with murder. I humbly conceive that the libel contains no aggravation. These murders, my Lords, are detailed, as your Lordships see, as having occurred within the last six months—the one in April, the other in October, and the third in November. Your Lordships see that they were all committed in this city—one in the Canongate, one in Tanner's Close, and another in the house of this prisoner,—both these last in Portsburgh—both within fifty yards of one another, and they are charged with having been done with the same intent. I say that intent is no aggravation of the crime. The crime charged is murder,

Burke and Hare.

Lord Advocate

which it is imposible to aggravate by any statement you can make. The intent is stated with the view of its appearing on the record of the Court, what the real motive of this chime was. My friend says, that I have not only stated the intent, but also with some other intent. The Court knows that when we libel intent, the intent is that which we know, and which the Court expects from us, but there may be some collateral circumstances which those other general terms are meant to cover. Thus, my Lords, these cases are all of the same degree—the same description of crime—all committed within a very limited time—within a very limited space, and with the same intent,—and the question is, whether there is any thing in sound sense—in the law of this country, or the authority of this Court, which excludes me from thus laying the libel? I am told by my learned friend, that this is the first case that has occurred where three murders have appeared in one libel, and it is with pain that I acknowledge the truth of the statement. It is with sorrow I admit that there is not only no precedent of such a thing in the annals of this Court, but in the annals of any civilized country whatever. That an individual should have been found capable of committing three distinct acts of murder, is a thing unexampled, and almost incredible. The occurrence has been left for our day, and for our country, and must thus for the first time be dealt with. But repeated instances of other crimes, of a capital nature, have been committed by the same individual, and the same rules must apply to both. These rules are, that wherever the crimes are of the same description and character, they may be tried on the same indictment. My friend has referred to a variety of authorities on the same subject, I humbly conceive that they will all be found to bear against him. The first is that of Sir George Mackenzie, which applies to the case of individuals having three different summonses, at the instance of three different complainers. He says, “a person accused was not obliged to answer, of old, but for one crime in one day,” &c. (*Vide* Mr. Robertson’s speech, page 109.) That more than one summons should not be exhibited the same day,—that is the true import of this passage. Now, my Lords, I would like to direct your Lordships’ attention to the authority of Mr. Baron Hume (page 166, vol. ii.) This author says, “the incompetency has never been disputed, of charging in one libel, any number of criminal acts, if they are all of one name and species, or even of one class and general description, so as to cohere in this point of view, and stamp a character upon the pannel, as one who is a habitual and irreclaimable offender of this sort.” Now, your Lordships see that my indictment falls directly under the law laid down here by Mr. Hume; the crimes are all of one name and species, all of one class and description, and stamp a character upon the pannel, which a jury and the Court are bound and entitled to look to. The prisoner is entitled to all fair means of defence, but we must look to the interest of the country, if we were to be excluded from bringing before a jury the whole extent of the guilt of the individual, such guilt being always confined to one name and one description, the consequences to the administration of justice would be most prejudicial. Mr. Baron Hume goes on to say, “thus James Inglis was tried on one libel for three acts of housebreaking, and one act of pulling and stealing wool, William Pickwith for three acts of highway robbery, Thomas Thomson for three acts of housebreaking, and Walter Ross for

Debate on Relevancy.

Lord Advocate

two acts of pocket-picking. Indeed, there is no instance, so far as I have observed, of the distribution of the several charges into separate libels in situations of this kind." These authorities all appear to be so decisive against my learned friend, I am surprised how he could have referred to them. My learned friend says that he sees no authority for accumulating such charges. I see no authority for separating them. According to Mr. Baron Hume's authority, the separation of such charges is unexampled in the annals of the Criminal Court. Your Lordship will see the hardship to individuals, if they were to be tried day after day for crimes of the same description, instead of being put at once to their trial for the whole. The same rule applies on all these occasions, where the criminal acts, though of different kinds, have a natural relation and dependence on each other, and accordingly, notice is taken by Mr. Baron Hume of a case of great importance, that made a great noise at the time—the case of Naine and Ogilvie, accused of incest, adultery, and poisoning the female's husband. In this case the objection was taken, and was expressly repelled. Mr. Baron Hume also mentions that the same objection was repelled in the case of John Irvine, where he was charged with five acts of robbery, each of them capital crimes. Thus the objection has been repeatedly stated, and repeatedly repelled by the decision of this Court. If such decisions are not to regulate your Lordships, I do not know in what way the actions of men can be regulated. In criminal matters, beyond all others, precedents ought to be strictly adhered to. There are a variety of other passages to the same effect, and I would just refer your Lordships to the daily practice of this Court in this matter. I would refer your Lordships to the case of James Martin, where a man was tried and convicted for four housebreakings. I would refer your Lordships to the case of Donaldson, tried for theft, reset, housebreaking, and theft,—all separate acts. I would refer you to the case of Beaumont, at Aberdeen, in 1826, where six different acts of housebreaking were charged, and the man sentenced and executed. I would refer you to the case of Gillespie, at Aberdeen, in 1827, where he was tried for nine acts of forgery, and executed; and I would refer you to the well-known case of Surridge, 7th November, 1820, which occurred at Greenock, where a man was indicted for two different acts of murder, and where the acts were committed at the distance of an hour from each other. These authorities and decisions of your Lordships, and the practice following upon them, must guide this matter now.

With respect to the reference made to the law of England to cases of this sort, the passage which my friend referred to, instead of being for him, is against him, and can only lead to the conclusion for which I have thus contended. Lord Ellenborough says—"In point of law, there is no objection to the insertion of several distinct felonies of the same degree, though committed at different times, in the same indictment against the same offender, and it is no ground either of demurrer or arrest of judgment"—(Chitty, page 253). This is precisely our law on the subject; but English practice certainly cannot rule the decisions of this Court in criminal matters, which have been fixed and decided so wisely, so long, and are so perfectly understood. On the whole, this objection ought to be repelled, and I ought to be allowed to proceed to trial against Burke, on the three different charges for murder contained in this indictment.

Burke and Hare.

Dean of Faculty

DEAN OF FACULTY—My honourable and learned friend opposite may rely on this, that none of us on this side of the bar entertains the smallest doubt that he has brought this case to trial in the manner that he thought best calculated for justice. On the other side, I know he will give us credit for this, that we state this objection from a firm conviction that it is essential for the ends of justice that it should be sustained. I was surprised at one observation of my learned friend, in concluding his speech, when he mentioned to your Lordships that it was of infinite importance that the decisions and practice of this Court should be adhered to, and yet candidly admitted to us, that this is the very first example on the whole record of the Justiciary Court of an indictment in the case of murder being so framed. *Accordingly, this is the very first example* of three or two separate or unconnected murders, alleged to have been committed at different times, places, and circumstances, being put into one indictment. No such instances can be produced, and are we not justified in representing to the Court that which is scarcely denied to be a relevant ground of objection—that the prisoner might sustain infinite prejudice in his defence, if he were to be put to his trial on this indictment with all the concomitants with which it is connected? If I understand my friend right, he means to desert the diet *pro loco et tempore* as to the woman, the hardship as to her being self-evident, and therefore her interest is not now before your Lordships. But the question remains, and I trust it will appeal to your Lordships that it is a question of importance, whether the interest of the male prisoner is not infinitely prejudiced by the form in which this indictment is framed. If I understood my learned friend, this indictment was framed for the purpose of producing an effect which I shall submit to your Lordships, is clearly calculated to lead to the greatest injustice to this prisoner. Therefore, let us see what it is that the prosecutor insists on passing to the jury. He makes an averment in this indictment that three murders have been committed. We shall submit that there are sufficient grounds for not putting the prisoner on his trial upon any of these charges under this indictment. Your Lordships will assume, in the first instance, not only that the prisoner may be innocent of each and all of these offences, but that he is innocent of them. We are entitled to the benefit of the ordinary presumption, that a man is not guilty of the crimes that are charged against him till these crimes are substantiated by clear, undoubted, and positive evidence. If he only get the benefit of that principle, granting that the prosecutor is only doing his duty in bringing him to trial for any offence which he is supposed to have committed, let us see whether this form of the indictment is calculated to do the plainest justice to the accused.

There are three charges of murder—one said to have taken place in the Canongate of Edinburgh, in the month of April, 1828, another in October, said to have taken place in the house of a person of the name of Hare, in Portsburgh; and another on the last day of October, in a different place in Portsburgh, in a house said to be inhabited by the pannel. Now, my Lords, these are separate charges of the murder of course of different persons, totally unconnected with one another, living in different places, found in different places, and in different circumstances, and the last of these acts is said to have been committed in conjunction with a third person,

Debate on Relevancy.

Dean of Faculty

who is not stated to have any connexion with the other acts. Supposing that the prosecutor is in a situation to prove one of these murders, I need not tell your Lordships that that will infer the death of the pannel. If he is in a situation to prove any one of them, it will lead to that result. And I need hardly say, that in such a case it will lead to it infallibly. Now, my Lords, I ask for what purpose are we to have three murders clammed into one indictment? If the object is to see, whether the man has committed the crime of murder or no, this must be done by proving a specific act of murder by facts which must and can relate to it alone. If the prosecutor is in a situation to prove one such case, where is the necessity for putting another separate charge of a different murder. There is plainly no such necessity. If we go to trial in this case, and if evidence is brought for the purpose of proving him guilty of one of these murders, and the prosecutor totally fails to prove it, or leaves that case in such doubt of the guilt of the pannel as to entitle a jury to give a verdict of not guilty, or not proven,—most assuredly, my Lords, if that should turn out to be the state of the case it could never for a moment be pretended, that that *attempt* to prove the pannel guilty of one murder of which he must be acquitted, could be used as a circumstance of evidence to prove him guilty of the other. Will anybody say that a false charge or a charge that turns out false in the evidence—a charge upon which the jury might say he is not guilty—is to be taken to prove a separate and distinct murder? Surely it is impossible to maintain that. And if no such argument could be used, what, then, is the purpose to be served, by putting three several murders into one indictment? My learned friend says he considers it for the advantage of the prisoner, because he might otherwise be exposed to one trial after another. But we must be allowed to judge of that, and we have fully considered the matter. Each case of murder must be proved by its own facts, and a *talis qualis* proof as to one cannot legally be allowed to operate as a make-weight in proving the other. The injury, therefore, which the pannel sustains by this form of indictment is manifest. You cannot lay that indictment before a jury, without necessarily producing prejudices in their minds from the very fact that he is there gravely charged with three separate murders. Accordingly, my learned friend at last comes to a point. I beg pardon if I am wrong, but as I understood him, he candidly spoke out that he thought it his duty to put all the three murders, and to include both the man and the woman, in one indictment, because an attempt to separate them would be an attempt to smother the charges that were brought against the prisoners—that is to say, that though the several murders are charged specifically as separate crimes, the prisoner is not to be tried on each on its own merits, but he is to answer to them all at once as making up, by a supposed connexion between them not charged in the indictment, some general charge of the crime of murder.

It is said, that by this objection we are endeavouring to smother the disclosure of the whole *story*. What is meant by this *smothering*? The Lord Advocate is undoubtedly entitled to bring the prisoner to trial on all and each of these charges. We are doing nothing to prevent this. But if the meaning be that we are desirous, while under trial for one murder, to keep back from the jury all facts relating to some other murder totally unconnected

Burke and Hare.

Dean of Faculty

with it, I say that in this sense we are entitled to do so, and justice requires that such a smothering of the assumed story should take place. For what does it amount to but an attempt to prejudice the minds of the jury by facts confessed to be irrelevant? The nature of the charges themselves is sufficiently calculated to excite unfair prejudices, originating as they are said to do in circumstances which unavoidably affect the best feelings of the public. But it is the duty of the Court to take care that nothing in the mode of trial shall be permitted to aggravate or give force to such illegitimate impressions. And it is precisely *because* it leads to an assumed connexion between the charges, which is not libelled, and could not be libelled, that we say it is not a legitimate mode of putting the prisoners on their trial.

It is said, that all the acts were committed in one place—in Edinburgh. But this will never do. There are here three separate places—three distinct *venues*—laid, just as certainly as if one act were in Edinburgh and another in Orkney. They may be said loosely, out of doors, to have all happened in one place. But *here* we speak of the *locus* technically, and it must be looked to in each case with legal precision. In the same manner, the crimes are totally separated and unconnected in regard to the time of their commission. My learned friend says, they are *only* at the distance of six months from one another. Is a distance of six months a slight separation of time in such a matter? One murder is said to be committed in April—another in the beginning of October—and a third on the last day of October or the first November. And all these are put into one indictment. Is there no prejudice to the prisoner here? Suppose I wished to prove an *alibi* as to one or more of them: Is the prisoner not put to an unreasonable difficulty in having to meet three such charges in one trial? The difficulty of ascertaining the facts, and the danger of their correct application, is infinitely increased. I may have an *alibi* as to one—in another there may have been no murder committed—in a third it may have been committed by a different person. But the prisoner is to be perplexed in his preparation, and the jury are to be perplexed in their consideration of the case, by the mixture of the whole together, till at last they may be unable to see the bearings of the evidence in each case, and he may be convicted upon the mere impression of guilt from the multiplication of charges, without any sufficient evidence in any one of them.

The acts charged, then, being perfectly separate in place, and time, and circumstances, what remains to connect them? My learned friend admits that he has not libelled it as an aggravation, or in any way as to the nature of the offence in the major proposition, that the several acts were done in connexion with one another. But he says, and it is true, that he has libelled as to each in the minor proposition, that it was done *with the intent* to sell the body for dissection. The charge is, that the act was done with the intent of disposing of the dead bodies for dissection, or *some other felonious intent* to the prosecutor unknown. It is said that these last words must go for nothing. Does my learned friend mean to say that he would fail in his indictment if he did not prove the specific *intent* that is laid there? This intention is laid, I think rather irregularly, in the minor proposition, as the motive for

Debate on Relevancy.

Dean of Faculty

which the thing was done That motive, by the law of Scotland, is a separate crime and in a late case, it was held, that it was not competent, to charge or prove one crime (embezzlement) as the inducement to the commission of another (fire-raising), where there was no substantive charge of it in the major proposition But waiving that, I suppose it cannot be maintained that the prosecutor would fail in his indictment by failing to prove that specific intent under their indictment for murder If he proves the murder itself, he is entitled to prove any intention, any motive that led to it And what could the pannel's counsel say, if it should appear that one of the murders was committed for a different purpose—for the purpose of robbery, or concealment of some other crime? It would evidently be no defence, that that motive was not specially libelled If they prove the particular case of murder, what signifies the particular intent? The motive will not palliate it in the slightest degree, unless it comes up to that sort of impulse which will produce a justification or reduce the offence to culpable homicide But suppose that the basis of my friend's argument were granted to him, and that this libelling of the intent had the effect of connecting the charges of this indictment, the thing of which I complain is avoided I complain of it precisely because the indictment is so framed as evidently to produce the impression on the minds of the jury, that there is such a connexion between the separate acts, though there is no such direct charge in it If my learned friend had so libelled it, we should have been upon a different question, Whether it was a competent charge at all or not? therefore, upon this indictment he is not entitled to make that case, because he has put his libel in such a form as to admit of the discussion of that question These are the views, in point of principle, on which I submit that this indictment should not go to trial

The plea on principle has been clearly supported by authorities; but before going into them, let me say a word more of the prejudice that the pannel must suffer, to which I have heard no answer There are three charges of murders, at the distance of six months, in different places—the prisoner is put to his defence *fifteen* days after receiving his indictment—he is examined and re-examined—five declarations libelled—perplexed and confused by these various charges, and now called on to speak to a list of fifty-five witnesses. I ask your Lordships, is he not prejudiced in his defence by such a form of procedure? It evidently exposes him to great and unusual difficulty I think that there is great room for objecting to the competency of it But I do not at present say, that it will or will not be a sufficient reason for quashing that indictment, and directing a different course I am, at all events, entitled to speak to the discretion of your Lordships, and I humbly submit that, taking it in that light, there is the most serious ground for the exercise of that discretion in this case It is further evident, as mentioned in the authority quoted from the law of England, that the prisoner may be prejudiced in his challenges of the jury, and, my Lords, as the legislature has thought that of so much importance as to make it the subject of an Act of Parliament, it is to be presumed that the pannel has an interest to preserve it unimpaired We do not at present know who the jurymen may be that may sit on this trial We mean no offence to any individual, but, speaking of the abstract principle and

Burke and Hare.

Dean of Faculty

right, it must be of importance to the pannel to have the use of all the challenges that he may have upon this trial. If he use them all, he would in separate trials have a right to make fifteen challenges, that, is to say, five gentlemen on each of the lists of the jurymen that were to be drawn out of the box. Can it be denied, then, that he is prejudiced in this point, if the prosecutor combine all the three charges in one indictment? In the law of England, I believe the prisoner has twenty challenges in such a trial, and yet we see that the effect in lessening them is taken by the English Judges as a serious reason for not putting a prisoner to trial on two crimes in one indictment. Still farther, there may be jurymen liable to be challenged *for cause* in one case and not in another. Again, there may be bad witnesses in one case, who are good witnesses in another; they may be liable to challenge in one case, and not liable to challenge in another. They might thus be examined to a certain extent upon one case, and though possessed of material information affecting another charge, could be examined no farther. On the whole, therefore, in every view that can be taken of the principle, and the justice of the case, the argument is clearly in favour of the objection. Then let us see whether there is authority for it.

The first, my Lords, is the express authority of Sir George Mackenzie, which was fully explained by my learned friend. Sir George Mackenzie says — (Here the learned counsel referred to the passage formerly quoted by Mr Robertson, see p 109) Is not that the very case of forcing a man to go on his defence for more than one crime at a time, whereby he may be distracted, and injured in his defence? That is the doctrine Sir George Mackenzie laid down a century and a half ago. My learned friend says, that this relates to the case of several prosecutors. But it is clear that it does not. The passage in the *quoniam attachamenta*, referred to, is in these words — “*Si quis per aliquem calumniatus fuerit, non tenetur respondere uno die, nisi de una appellatione, aut de uno delicto, nisi sponte voluerit. Sed si plures personæ eum appellent, de diversis calumniis, pluribus respondere tenetur.*” The first case here stated, is clearly that of *one* prosecutor, and it is of that case that Sir George Mackenzie speaks. What authority is opposed to this? My learned friend has referred to the passage in Mr Hume, but Mr Hume’s authority, rightly understood, is very much in favour of our argument. He says — (See Mr Robertson’s speech, p 110) So, my Lords, the case is a case of housebreaking and theft, and he says, — “The same method shall be good with respect to those criminal acts, which, though distinct in themselves, are, however, charged as evidences and instances only, to make out one genuine crime, such as sorning, harbouring of thieves, forestalling, oppression, or the like,” p 166. That doctrine we have no occasion to interfere with, though there may have been examples of it not of the very best kind. But your Lordships will observe that these offences, though some of them are capital, are still very different from the charge of murder; for, even in the case of housebreaking, the libel may be restricted to an arbitrary punishment. But I think my learned friend would scarcely restrict a charge of murder to an arbitrary punishment. The charge itself may, indeed, be restricted to *culpable homicide*; but,

Debate on Relevancy.

Dean of Faculty

that is a change in the nature of the crime itself. Would any prosecutor go to trial before a jury, on a charge of murder, and restrict the indictment to an arbitrary punishment? I apprehend not, and, in this respect, the crime of murder stands by itself, and cannot be compared with any other case. But Mr Hume goes on to say,—“The like practice is naturally observed on all those occasions, unhappily too frequent, where the criminal acts, though of different kinds and appellations, have a natural relation and dependence, as parts of one foul and nefarious story,—as successive steps of the pannel’s progress in a course of increasing guilt, into which the indulgence of one criminal passion has betrayed him.” This refers to the case of a prisoner accused of connected and progressive crimes,—charges, for example, of robbery and murder, where these crimes take place at the same instant, or are part of the same transaction,—where they have a connexion with one another. I do not dispute the correctness of putting them in one indictment in such a case. But such examples bear no analogy to the present case. Yet, even in those cases, your Lordships will observe what Mr Hume expressly says,—“In like manner, the Court, whensoever they find that the immediate trial of such manifold charges is *likely to prove oppressive*, either to the witnesses, the jury, or themselves, and *still more, if they see cause to believe that it may embarrass the pannel, or beget prejudice against him, in the minds of the jury*; and more especially still, if it appear that it was truly the prosecutor’s object to lay him under such a hardship —In any of these cases, they have it certainly in their power to divide or parcel out the libel, and proceed in the first instance to the trial of as many of the articles, as may fitly be dispatched in a single diet, reserving the others for trial afterwards,” p 168. And then he quotes cases on that point. After this, the learned author states *his opinion* distinctly against the practice of charging, in one indictment, one person with one offence, and another with a separate offence, unconnected with it, though in conjunction with the person accused of the first. And as he refers to the express authority of a case in 1784, showing the approbation of the Court of the conduct of the prosecutor, in declining to proceed with an indictment, which was framed on that principle, I think his clear opinion is entitled to some weight with your Lordships. To be sure, there are instances the other way. My friend says, in 1696, 1717, and 1733, it was the practice. Several charges in one indictment, and directed against different parties, were sent to trial, and that this was the practice in those times. I just answer that by saying, that if your Lordships’ predecessors thought proper to do those things in such cases,—to send, for instance, a charge of ten separate crimes to trial at once,—surely it will not be seriously maintained that that practice is to rule your Lordships in cases of this description, now. If they would not rule your practice generally, why are they to rule your Lordships in a case like the present, as to which it is *admitted that not one precedent in any period can be produced*? This accumulation of these erroneous charges, in cases of this kind, is like no other, because they must produce prejudice to the prisoner. There is, indeed, but one case adverse to the cases in 1784, Fraser, Macgregor, Anderson, and Paul, which is of a later

Burke and Hare.

Dean of Faculty

date, (*vide* Mr Robertson's speech, p 111), and that of Stewart and Gordon, in 1785, (*cited* p 112).

LORD MEADOWBANK—That was the case of several individuals

DEAN OF FACULTY—I am aware of that But I wish to observe, that in that case the charge was that of *theft* and *reset*,—crimes having a natural connexion, and the whole matter was, that one of the prisoners was charged with *reset* in two of the cases, and not in the third But they were both charged with being *habit* and *repute* thieves, and it was also distinctly libelled, that there was a compact amongst them, for the purpose of committing then crimes My Lords, my learned friend wished to rest something on a single case of two murders It is in vain to refer to that as a case The case of Surriage was the case of a soldier, who had been engaged in a contest with the town's people, in which more than one person was killed One charge was, that of wilfully discharging fire-arms in the street, and the other was a charge of murder, committed in the fray on that occasion It is quite clear the acts there were not unconnected homicides, but all parts of the same transaction. They were all charged as done at the same time—in the same riot and there was no difference between that case and the case at Aberdeen

LORD MEADOWBANK—Discharging fire-arms, and murder

DEAN OF FACULTY—The charge of firing was found not relevant It was struck out by the Court

LORD MEADOWBANK—It was just one act They were both caused at the same time—though one died at one time, and another at another

DEAN OF FACULTY—So it is quite plain, my Lords, that these cases cannot apply to the present case Now, my Lords, before I sit down, I may, with the utmost deference, request your Lordships' attention to the principles that are entertained by the English Judges My friend says there is nothing in the law of this country that renders it *incompetent* to put the indictment in these terms I am not desirous of pressing the point to the question of mere competency in the abstract, but I submit to the Court, whether they will, in the exercise of a sound discretion, allow the indictment to go to trial in this form, where no precedent of such a thing having been allowed, is produced In the observations of my Lord Advocate on the law of England, he had surely not attended to the passage cited by Mr Robertson from Chitty, which says, expressly, that there is no strict law against laying various crimes in one indictment, and, therefore, if not taken notice of before trial, it will not be a ground for setting aside the verdict, or for arrest of judgment Notwithstanding this state of the law, the rule of practice is fixed, in all cases of *felony* It is not extended to the case of misdemeanours, but, in the case of felonies, the rule is, that no more than one offence should be regularly charged in one indictment

Lord Ellenborough's doctrine is quite clear to this effect,—it is all the stronger for us that he lays down the strict law of mere competency, as my learned friend states it, but still, he says it is usual in felonies to call on the counsel for the prosecutor to select one felony, but the practice has never extended it to misdemeanours Now, my Lords, this is not only a felony, but the highest species of felony I ask, then, whether your Lordships will, with an indictment prepared in this form, so manifestly calculated to injure the prisoner, without any ultimate benefit to the justice

Debate on Relevancy.

Dean of Faculty

of the case, proceed to trial? I need not say to your Lordships, that this is a very serious case,—of that there can be no doubt in the mind of any person that has read the indictment. My friend says, that it has never occurred in his time, that there were three murders charged in one indictment. Whether it has happened recently in this country, I will not say, but I am pretty sure that distinct murders have been committed by individuals to that number, and yet there is no example anywhere of their being tried conjunctly. But the more anomalous and the more serious this case is, it is of the greater importance to public justice, and the interests of the parties, that the utmost caution should be exercised. In doing justice to the public in this matter, it is of the utmost importance to all the lieges of the country—that this case, which relates to crimes of the most extraordinary nature, should be proceeded in with the utmost caution which it is in the power of the Court to direct.

LORD JUSTICE-CLERK—Your Lordships have now heard the objection stated by the pannel at the Bar to this indictment, and your Lordships will now give your opinions in consequence of this objection.

LORD PITMILLY—My Lord Justice-Clerk, the Court are peculiarly circumstanced in giving an opinion upon an incidental point in a case, which, in some shape or other, is to go to trial. The counsel for the prisoner have spoken of this incidental point, and they were not called on to avoid saying anything in favour of the prisoners,—but quite the reverse, and, accordingly, we have heard two very eloquent speeches on the matter in bar of trial,—and, on the other side of the bar, an opposite course has been taken, but the Court, in giving their opinions, must be extremely calm and guarded, so as to avoid doing prejudice to the prisoner, on the one hand, or to the ends of public justice, on the other. I agree with the counsel that there are two very different questions indeed here. The first is, whether the prisoner, Helen M'Dougal, ought to be tried on an indictment which charges three different acts of murder, only one of which she is accused of being concerned in, while the other acts relate to the other prisoner. On that point, I do not think it necessary to say much, from the turn that the case has taken. I have not the smallest doubt that the intentions of the public prosecutor were fair,—that he intended not to prejudice this woman, but to benefit her, by bringing the case fairly to trial; but I entirely approve of his proposal to separate her case from the two acts with which she is not charged. The other question is one of a very different nature,—whether it is competent, in the *first* place, and in the *second* place, if competent, whether it is proper and fit that this pannel, Burke, should go to trial upon an indictment charging him with *three* different acts of murder; or whether they should be separated, and tried separately, at different times. As to the *competency* of the proceeding, it is impossible for me to doubt. When I read this indictment over, I was struck with it; and I proceeded to examine the authorities on the subject; because, although I did not know whether an objection would be taken, it is right the Court should be well informed on such matters. Now, when I look to the very express authorities which have been quoted, I can come to no other conclusion. In the case of Beaumont, there were six acts of housebreaking. In the case of Gillespie, nine acts of forgery were charged.

Burke and Hare.

Lord Pitmilly

I sat on the Bench, and I entertained not the smallest doubt of the competency of these proceedings. It may not be recollected by counsel, but there is a case which has not escaped my recollection, where two murders (not indeed unconnected) were charged in one indictment. There were two men killed on the same evening, and the murderer went to trial on that indictment, before me, at Jedburgh. The unhappy man was convicted, and he was executed. I have not the smallest doubt, and I think it would be dangerous if there was a doubt, in any quarter whatever, upon this subject. There may be rules adverse to ours in England on this subject, but our practice has been too well fixed to doubt, for a moment, that one individual may be charged with separate acts of the same sort of crime, committed at different times, and different places, and may go to trial upon such an indictment.

But, my Lords, there remains a question of discretion,—of sound, judicial discretion. If there were a want of competency, it would be *pari judicio* to interfere, but when it is a question of discretion, the Court do not interfere, unless when called upon, for, while they intended to confer a benefit, they might be doing an injury to a person accused. There may be cases where it would be advantageous for the prosecutor to have three trials instead of one,—that is the more common case, because, if the prosecutor fails in the one case, he sees where the evidence fails, and then he comes forward to the next case better prepared. I recollect the case referred to by counsel, where two officers and two sergeants were brought to trial for the murder of different individuals, who were shot on the plainstones of Aberdeen. It was a very long trial, and, at length, the pannels were acquitted. The trial was in the hands of private parties, and they were not satisfied. They immediately notified their intention to bring another indictment against the same persons, accusing them of the murder of a different person. I will never forget the excitement of the feelings of the Bar and the public on that occasion. The whole country was crying out in the strongest manner against such an act of oppression. The prosecutor was obliged to give it up. And such was the sympathy in favour of these people, who were tried under a first, and to be tried under a second and third indictment, that several individuals set on foot a subscription for them, and instead of being punished, they went off enriched. That is the natural consequence of the public prosecutor bringing first one indictment, and then another, and then a third, each for different acts of the same sort of crime. It must lie, therefore, with the Court to judge, in each particular case, after hearing the views of the pannel, on the one hand, and the prosecutor on the other, whether the different charges should be separated. In this case it is impossible that any such result should happen, as took place in the Aberdeen case, because here the prisoner insists that the different charges should be tried separately, and, therefore, there can be no complaint against the public prosecutor, if he prosecutes on the second and third charges. And, my Lords, since the prisoner himself states by the mouth of the very respectable counsel, on whose responsibility we take it, that he will suffer a prejudice by going to trial on an indictment which charges three acts of murder, unconnected with each other, I think they should be tried separately, and that the public prosecutor should proceed first with the one, and then with the others, if necessary.

Debate on Relevancy.

Lord Meadowbank

LORD MEADOWBANK—My Lord Justice-Clerk, I entirely concur in the views which have been taken of this question by my brother Lord Pitmilley, and I am equally satisfied with his Lordship, that it is particularly incumbent on the Court, in a case of this kind, where we are told such excitement has taken place in the public mind, to be particularly cautious to prevent what may fall from us from doing prejudice, either to the one side or to the other, and that even by weighing the expressions we may employ in delivering our judgments I shall say nothing, therefore, of the circumstances divulged in this indictment, or of the causes for public anxiety, which may be supposed to exist, but I will venture to say this, that there neither is, nor has been, any excitement or prejudice in the minds of any of your Lordships, and the greater, the higher, and the more atrocious the charge to which those individuals are brought to answer, so much the greater, if possible, will be your anxiety to banish the feelings naturally arising from such charges in your own minds, and to see that the individuals accused should suffer no prejudice from the course of procedure that shall be sanctioned by you.

My Lords, the Dean of Faculty said, and I concur with him, that this is a question of general interest, and of great importance. Indeed, if the counsel for the prisoners had persevered in urging that the indictment was incompetently laid, from two parties and three charges, being included in the same libel, I could hardly imagine a question of greater importance to the course of proceedings in this Court being brought before your Lordships. Such a doctrine, if entertained, would have gone far to shake the whole practice of the Court. The good sense of my friends, the Dean of Faculty, and Mr Robertson, have, however, induced them to abandon the views to this extent, which are stated in the defences for the panels; and I understand that it is now contended that the prisoners are not bound to plead to the indictment as it has been laid.

The Dean of Faculty has admitted, that for upwards of 130 years, it has been the practice of this Court proceeding in one steady and uniform course, without interruption,—to admit of indictments containing different charges of the same description of crime, and against different individuals, some of them connected with all the charges, and others of them only with some of the charges; and it is also admitted, that at a remote period, this has taken place in the *graviora delicta*.

But we were told that we ought not to look back to precedents occurring in the year 1696, as of authority in this Court. I for one, however, am aware of no reason why we should not recur to that period, any more than to the present. For one, I cannot regard the precedents of that period as in accord with the views of the Dean of Faculty, nor consider that they are not just as fit for guiding the judgments of your Lordships, as precedents taken from less remote periods, or in the times in which we are now living. Gentlemen, forget that the year 1696 was posterior to the Revolution, when great and eminent lawyers sat upon the Bench,—men as much devoted to the cause of freedom, and who did as much for it as any of their successors, and whose authority therefore, ought to stand as high in such matters, as that of any of the Judges who have come after them.

In the present case, however, there is no occasion for recurring to those

Burke and Hare.

Lord Meadowbank

periods for precedents We have only to look to those cases with which we are every day familiar, and I will venture to say, that none of us has ever sat at Glasgow without seeing cases in which similar accumulation of prisoners, and offences of a capital description, have not been included in the same indictment It is impossible, too, to turn up our books, without meeting with cases of this description, and I need only refer your Lordships to the case of Murieston and Miller, one of the best-known cases that ever occurred in this Court, for an example of what I am now stating

These individuals, your Lordships will recollect, were accused of a great variety of acts of sheep-stealing, and also of reset of theft The acts of theft libelled, were charged as having occurred at different periods, and during a long track of time In some of them, both individuals were concerned, others of them not The places, too, were remote, and in different countries The parties were defended by the most eminent counsel, and many objections were urged to the relevancy of the indictment, but no such objection as that now stated, was then even brought forward And by as able men as ever sat upon the Bench, the indictment was sustained,—the case went to trial,—the prisoners were convicted, had sentence of death, and notwithstanding the most urgent representations to the Crown, and an attempt even at appeal to the House of Lords, (I believe,) in which nothing of this kind was urged, the sentence was carried into execution

In our own times, again, it is admitted, (and after the statement read from Mr. Baron Hume, it was impossible to controvert the fact,) that in cases of forgery, (a crime inferring a capital punishment as much as the crime of murder,) this multiplication of charges has been repeatedly admitted In fact, I remember, in one case, at Glasgow, of uttering forged notes, in which both a father and daughter were accused, which was tried before myself, assisted by Lord Gillies, where there were three or four charges, I forget which, of uttering forged notes, to different individuals, and at different times, the father being accessory to the whole, the daughter only to one of the charges, the Court had no doubt of the relevancy of the indictment The father was convicted and executed, and with respect to the daughter, the libel being restricted, she had sentence of transportation

In cases of theft, the instances are innumerable, but as this is not disputed, I shall say nothing of those cases, farther than to advert to the reason which has been alleged for this accumulation being admissible in that class of capital offences, while it is not in others,—viz, that habit and repute, or the reiteration of the offence, is in itself a ground for conviction, or rather for exciting a legal ground of suspicion against the person accused

• But, in the *first* place, in theft, no more than in any other crime, can habit and repute, or a reiteration of the offence, be used as an ingredient in the evidence adduced for convicting an individual of any one particular act Each act must stand by itself, and the habit and repute, or reiteration of the crime, can only go as matter of consideration to the Court in apportioning the sentence

But I observe, that in the passage quoted from Baron Hume, there was a case mentioned by him which had nothing to do with habit and repute—I mean the crime of robbery, in which he maintains, and we know from every day's practice, that it is competent to charge repeated acts But in the crime of robbery, habit and repute has no more to do than in the crime

Debate on Relevancy.

Lord Meadowbank

of murder. Considering robbery as an aggravated theft, I was once inclined to be of opinion, that being habit and repute a thief, might be laid as an aggravation, and I directed an indictment to be so laid, when holding the high office so honourably discharged by my Right Honourable friend at the Bar, in order to have the point settled. But your Lordships held that such a charge was incompetent, and it is now therefore fixed law, that a charge cannot be laid. In this respect, therefore, the crimes of robbery and murder are in the same situation—both are of the same class, and among the *graviora delicta*, and it is no more competent to charge one with being habit and repute a robber, than with being habit and repute a murderer both, in this respect, are alike. I can see no principle, therefore, on which it should be held competent to accumulate charges of the one description in the same indictment, and not in the other. If we have done right in entertaining such libels in the case of robbery, I can see no ground for rejecting charges similarly made in the case of murder.

But the case is now offered to our consideration, not as one of incompetency, but as one of discretion, in which the Court is to determine whether it is fitting that the trial should proceed at one and the same time, of the three charges, as laid in the indictment,—your Lordships having a due regard to the ends of justice, and the interest of the prisoners. This is a very different question, and one requiring a different consideration.

In the *first* place, however, I must remark, that I think the Lord Advocate acted with sound discretion, in laying the indictment as he has done, both for the sake of the public, and because, by so doing, he has given the prisoners every advantage in his power to confer on them,—which, if he had raised separate libels, they would have lost. By adopting this form, his Lordship has left it to the prisoners and their advisers, to consider if it was for their benefit to go to trial together,—or, if they thought otherwise, to apply to your Lordship to separate their cases. In like manner, with respect to the other prisoner, Burke, if he deemed it proper to go on with the three charges, he might do so, and if not, he might apply to your Lordship to separate them. In so doing, the public prosecutor was entitled to think, nay, was bound to think, that he left the prisoners with the best protection which he could afford them. He left them in the hands of your Lordship, to whom, and to whose discretion, no appeal could be made in vain. I can have no doubt, therefore, of the propriety of the mode in which these prisoners have been charged.

But we have now nothing to do with the case of the prisoner M'Dougal, as the Lord Advocate consents that her case should be tried separately. As to Burke, the most eminent counsel at the Bar have stated their reasons for thinking, that it is for the benefit of the prisoner that the trial of the three charges should be separated, and their reasons for so judging. In this case, I am for yielding to this application. Perhaps I do not enter entirely into the views which they have stated, as affording the grounds of their advice. But with the counsel, and not with us, rests the responsibility of so having advised their clients; and as I consider that the ends of public justice will be equally attained by trying the offences separately, I am of opinion, that while your Lordships sustain the indictment, you shall direct the Lord Advocate to proceed separately in the trial of the different charges.

Burke and Hare.

Lord Mackenzie

LORD MACKENZIE—I have nothing to add to what has been stated. This indictment, in the major proposition, contains one charge of murder; and, in the minor, three separate instances of that crime. In these circumstances, I think that there is nothing in the form of this indictment objectionable. If this case had gone on to the full extent, without objection, I do not see that there would have been anything illegal. But I also think, that in indictments of this form, the Court have a discretionary power, on its being stated by the pannel and his counsel, that he will suffer prejudice in the trial, if a plurality of charges are proceeded in at once—I say the Court have a discretionary power of separating these charges, provided the Court are satisfied that the request made is fair, and not unreasonable. Now, in this case, I am of opinion that we cannot say the request, stated in the way it was stated, and supported with the reasoning with which it was supported, is either unfair or unreasonable. I therefore think the proposal that has been made by Lord Pitmilly ought to be adopted.

LORD JUSTICE-CLERK—In reference to the argument that we have heard so ably stated on both sides of the Bar, I shall, as your Lordships have done, confine myself to the competency of the indictment against the pannel Burke. The other point which has been objected to, has been withdrawn from our consideration by the Lord Advocate—in the propriety of which course I entirely concur. As to the objection taken to the competency and legality of this indictment—after listening to everything that has been urged—after considering the authorities, and recollecting, likewise, something of the practice of your Lordships since I sat here, I certainly thought, with all of your Lordships, that this indictment was framed in a legal and competent form. The pannel is not charged with crimes of a different nature, in the same indictment. He is charged with one single crime—that of murder, but he is accused of having committed three different acts of that crime, no doubt one of them in April, another in October, the third on the last day of October, or the beginning of November, and certainly, I admit distinctly, in different places, but all within the city of Edinburgh, or its liberties. He, therefore, does not in the least degree stand in the situation of a party, as has been pressed on your attention, loaded with a variety of crimes. I have known cases, where an individual had a variety of different crimes charged against him, and where the Court had been called on to interfere. In the case referred to by Mr Hume, (page 168,) there were many crimes charged in the indictment, whereby the pannel might have been embarrassed in his defences, or suffered hardship,—in these cases, the Court have the power to divide, or parcel out, the libel, and proceed to the trial of as many of the articles as they can dispatch at a single diet, reserving the others to another diet. The learned author observes “This course was followed in the trial of David Young, whose indictment was for fire-raising, cursing of parents, attempt to murder, assault, and deforcement of the officers of justice, and these crimes charged as committed against different persons, in the years 1733 and 1738, and the intervening years. In the information on his part, he insisted on the troublesome and oppressive length of such a trial, and the difficulty he must find of conducting his defence against charges so numerous, and so remote from each other,

Debate on Relevancy.

Lord Justice-Clerk

both as to their kind, and the pains of law. The Court proceeded, therefore, in the first diet, to the trial of the two capital charges, the fire-raising, and cursing of parents, and delayed to give judgment on the other less important articles of the dittay"—(Vol. II, p 168)

Here is an illustration of what the practice was in those days, and the course that the Court took there was, to separate the different articles charged, and try them at different times. But this authority cannot apply to the present case, which is a charge of murder, and murder alone, by committing three different acts of that crime. It has been the practice of this Court—and, if contrary to law, we have all been very ignorant in the proper discharge of our duty—to give effect to indictments, charging a variety of acts of housebreaking, and highway robbery, &c—sending such indictments to a jury,—receiving verdicts, and carrying the law into execution. I recollected a case (1817), where a person was charged in this Court with a variety of acts of robbery on the highway, and having sent for my note-book, I observe that the verdict returned by the jury is,—“Find the pannel (Woithington) guilty of the three first charges of robbery contained in the indictment.” Robbery is one of the four pleas of the Crown; and on what principle of law we can make the distinction between it and that which is just another of these pleas, it is impossible to conceive. Therefore, I think that the charge here stated is a competent and legal one; and it is not in the power of the Court, without departing from all the authorities and decisions, to find that it is incompetent and illegal.

But, besides the legal objection to which I have just adverted, the Dean of Faculty has put the case, as one to be dealt with according to the discretion of the Court. He states, that upon the most due consideration of the charges brought against the pannel, and the circumstances in which he stands, the pannel ought not to be sent to trial upon the indictment as it is framed, and he asks your Lordships to separate those charges before trial. I am, therefore, necessarily called upon to look to the principles that have influenced the Court, in all cases where there was an appeal to its discretion, and, taking them fully into consideration, I come to be of opinion, that the present may be held as belonging to that class of cases where the Court have held that an indictment is relevant, but have found it inexpedient that the pannel should be sent to trial upon it. That is just the principle which must influence me on the present occasion, as well as your Lordships. When, upon the responsibility of respectable counsel, the pannel says that he will be prejudiced in going to trial on all the charges, I am inclined to grant the request now made. But we do it on the principle, that the pannel has three specific charges exhibited against him in this indictment, and the public prosecutor will have this choice of the one he is to proceed with. He may proceed *seriatim* on the other acts that are not this day to be tried, and the deliverance of the Court on this indictment must be—in respect that the pannel, William Burke, is properly and legally brought into Court, the public prosecutor shall select which of the three he wishes to proceed with. I may just add, that if the case had gone to trial upon the three charges of murder, it would have been the sacred duty of the Judge in charging the jury, to have told them that they were trying three separate and distinct acts, though of one species of crime,

Burke and Hare.

Lord Justice-Clerk

and that they must apply the evidence to each of these three acts, and I am sure the jury would have been equally on their guard against any impression of a different sort

LORD ADVOCATE—According to the judgment of the Court upon these objections, I am tied down to proceed with the trial of one of those crimes, leaving me the choice as to which shall be first taken, and reserving my right, in case I shall fail in one, to proceed to the trial of the others. I propose, therefore, to proceed with the third case libelled, and, on this footing, there seems nothing to prevent my proceeding against the woman as well as against the man. She can suffer no prejudice in now being brought to trial for this single act, on which she is charged as art and part guilty along with Burke.

DEAN OF FACULTY—I thought the Lord Advocate had deserted the diet *pro loco et tempore* against the woman.

LORD ADVOCATE—If this libel had gone to trial against Burke on these three charges, I was inclined to desert the diet against the female prisoner; but now that I am to be restricted to the trial of one of these charges, I am entitled to try her and him together on the last of the charges exhibited.

DEAN OF FACULTY—But, still, the other two charges stand upon the indictment.

LORD JUSTICE-CLERK—There is nothing in that. Have you anything more to state on the part of the prisoners?

Mr. ROBERTSON—Oh, no, my Lord.

The following interlocutor, repelling the objections, was then pronounced:—

Interlocutor of Relevancy.

The Lord Justice-Clerk, and Lords Commissioners of Justiciary, having considered the indictment against William Burke and Helen M'Dougal, pannels, and having heard parties' procurators at great length upon the relevancy thereof,—Find the indictment relevant to infer the pains of law, but are of opinion, that in the circumstances of this case, and in consequence of the motion of the pannels' counsel, the charges ought to be separately proceeded in, and that the Lord Advocate is entitled to select which charge shall be first brought to trial; and His Majesty's Advocate having thereupon stated that he means to proceed at present with the third charge in the indictment against both pannels—therefore remit the pannels with that charge, as found relevant, to the knowledge of an assize, and allow the pannels, and each of them, a proof in exculpation and alleviation, reserving to the public prosecutor afterwards to proceed under this indictment against the said William Burke upon the other two charges contained therein.

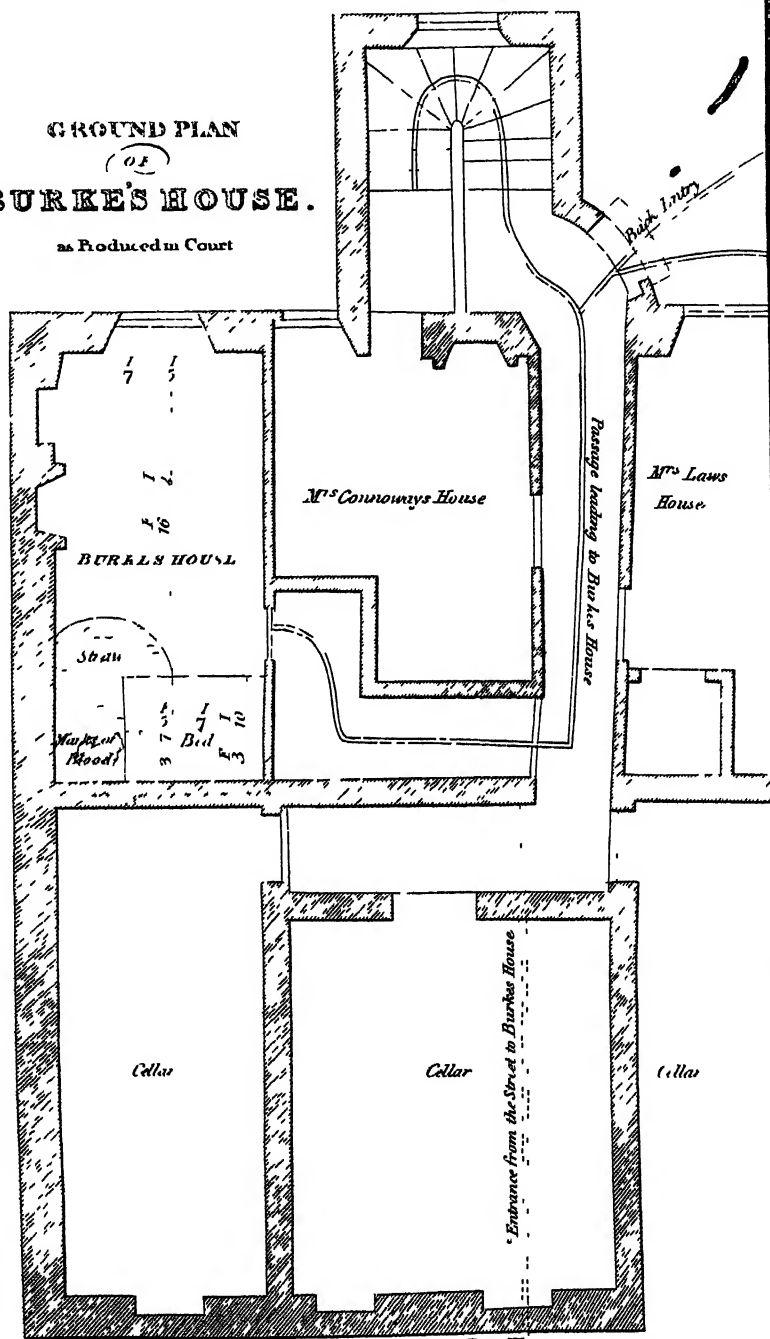
D BOYLE, I.P.D.

LORD JUSTICE-CLERK—William Burke and Helen M'Dougal, the indictment having been read in presence of you both, I again ask you, William Burke, are you guilty or not guilty of the third charge contained in this indictment?

WILLIAM BURKE—Not guilty.

GROUND PLAN
(OF)
BURKE'S HOUSE.

as Reduced in Court



PORTSBURG

Published by Thomas Ireland Jun. Edinburgh

J. Clerk

Plan of Burke's House and Houses adjacent.

Evidence for Prosecution.

Lord Justice-Clerk—Helen M'Dougal, are you guilty or not guilty of that charge?

HELEN M'DOUGAL—Not guilty

The following persons were then chosen by ballot, and sworn to pass upon the assize of the pannels:

Nicol Allan, Manager of Hercules Insurance Company, Edinburgh
John Paton, builder there.
James Trench, builder there.
Peter M'Gregor, merchant there.
William Bonar, banker there
James Banks, agent, Cassilis Place, Leith Walk
James Melliss, merchant, Edinburgh.
John M'Fie, merchant, Leith
Thomas Barker, brewer there
Henry Fenwick, grocer, Dunbar
David Blash, grocer, Leith
David Hunter, noninunger, Edinburgh
Robert Jeffrey, engraver there
William Bell, grocer, Dunbar
William Robertson, cooper, Edinburgh

Evidence for Prosecution.

The following witnesses were then adduced in proof of the indictment, and all lawfully sworn, purged of malice and partial counsel.

1 JAMES BRAIDWOOD, *examined by Mr. ALMON*—(*A plan of Wester Portsburgh was handed to the witness*)—Was that plan made by you?—Yes, sir

What is it the plan of?—The houses of Wester Portsburgh and the places adjacent

Who was with you?—There was an officer. I was there on the Saturday night; I went with Mr. Stewart

Did you know it to be Burke's house?—Yes, I knew it to be Burke's house

Is the plan in your hands a correct delineation of the houses underground there?—It is

2. MARY STEWART or STUART, *examined by Mr. WOOD*—Do you remember a person of the name of Campbell coming to your house last harvest?—Yes, sir, Michael Campbell

Do you remember what month it was in?—No, sir, I do not recollect.

Some time before Martinmas last?—Yes, before Martinmas

By the Lord Justice-Clerk—You are sure it was before Martinmas?—Yes.

By Mr. WOOD—Did he remain in your house some time?—I think about two months.

Burke and Hare.

Mary Stewart

You cannot speak precisely.

And then he left the house?—Yes, he left it on the Monday before the fast day, 30th day of October.

Did any woman after that come to your house inquiring for him?—Yes, sir, I was told so, I was lying in the infirmary at the time.

On your return from the infirmary, did you find any person in your house at that time?—Yes, sir, I did, a woman, that he said was his mother

Did she state for what purpose she came?—in search of her son?—Yes, sir

What name did she give herself?—She gave herself Mrs. Campbell, Madgy, or Duffie I have forgot,—her husband's name was Duffie.

Did she say where she came from?—From Glasgow

How long did she stay in your house?—Just till the next morning.

What day was it you came from the infirmary?—I came out on the fast night, and she left me on the Friday morning

She left your house on the 31st October, on the Friday morning?—Yes.

By the LORD JUSTICE-CLERK—You recollect of her leaving it?—Yes, sir

Do you recollect where she said she was going? Was she going to search for her son,—see after her son?—Yes, sir

By Mr WOOD—Her son was not in your house at that time?—No, sir

He had gone?—Yes, sir

You know a person of the name of Charles M'Lauchlan?—Yes

You have seen him to-day?—He is along with me at present

He stopped with you?—Yes, he slept with my son and Campbell.

Did the woman go away in company with Charles M'Lauchlan?—She went out of the room in company with him, so far as I saw

Have you ever seen that woman since?—No, not till I saw her in the police-office.

I would ask you what hour of the day on Friday was it that she left your house?—I never rose that day, as I thought, it was 7 or 8, but I have been informed it was farther in the day

Do you remember what day you saw this woman in the police-office?—On the Sunday

Was she alive or dead?—She was dead

By the LORD JUSTICE-CLERK—That was two days after?—Yes, sir

By M WOOD—Had you no difficulty in recognising the body to be the body of the woman Campbell that lodged in your house?—No, sir, I had no difficulty.

Have you any recollection what dress that woman wore when she left your house?—A petticoat, a red short-gown, striped, a long printed gown, short-sleeved and open before, and sewed with white cotton thread behind

I suppose you would know these articles again?—*(The articles were handed to the witness, which she identified)*

By the LORD JUSTICE-CLERK—These are the articles which she had on when she left your house?—Yes, she had these articles, but I know nothing else.

What age did this woman appear to be?—Between forty and fifty, I suspect.

That is to say, you suppose?—Yes.

Evidence for Prosecution.

Mary Stewart

By Mr WOOD—About what size was she?—A little low-set woman about my height (about five feet)

By the LORD JUSTICE-CLERK—When she left your house, did she appear to be in good health, so far as you know?—Yes, sir, in as good health as any woman could be, to all appearance

By LORD MEADOWBANK—Pray, during the time she was in your house, did you see her drunk at all?—No, sir, never the worse of liquor

3 CHARLES M'LAUCHLAN, *examined* by Mr WOOD—In the month of October last, did you reside in the house of Mrs Stewart in the Pleasance?—Yes, sir

You saw her here to-day?—Yes, sir.

Did you see Michael Campbell there?—Yes, sir

He left it, when?—About the end of October, the 30th

Do you recollect a woman coming to him about the end of October?—Yes

When she came, was Michael Campbell living in the house or not?—Yes, sir, he was

Was Mrs Stewart in the house at that time?—She was in the infirmary

What name did she go by, this woman?—Majory M'Gonegal

What other name had she?—Miss Campbell or Duffie. She was married a second time, Duffie was her second husband

She was called Campbell, Duffie, or M'Gonegal?—Yes.

Had you ever seen her before she came to that house?—Yes, sir

Where did she come from?—From Inishowen, in the county of Donegal, in Ireland

Did she remain some days at Stewart's?—Yes, sir

What day was it she went away from Stewart's the last time?—On a Friday, 31st October

At what hour?—Betwixt the hours of nine and ten in the morning.

Did you accompany her?—No, sir, she came to me at my own shop door.

Where is that?—At the foot of St Mary's Wynd

Did she tell you where she was going, or what she was to be about?—I asked her where she was going, and she said she did not know where her son was, and she was leaving town

Was she in perfect good health at the time you saw her?—Yes, in perfect good health, and had been so all the time she was in Stewart's

Did she appear to be of sober habits all the time you knew her, or otherwise?—She was

Then do you know whether she had any money?—No, I do not think she had any money

Did she complain of not having any?—I did not hear her say so

By the LORD JUSTICE-CLERK—Had you access to know whether she begged or not?—I cannot say whether or not

Do you know whether she paid anything for her lodgings at Stewart's?—Her son paid for her

Had she breakfasted at Stewart's that morning before leaving it?—No, sir, she had not.

Burke and Hare.

Charles M Lauchlan

Did you ever see her again?—Not in life, sir.

Pray, did you see her body after?—I did, sir

Where?—In the police-office.

When?—On the 2d of November

Next Sunday?—Yes

Two days after?—Yes

By the LORD ADVOCATE—Did you know the body?—Yes

By Mr WOOD—You saw the body, and knew it to be the body of the woman Campbell?—I did, sir

Did she ever call herself Docherty?—Not that I know of

4 WILLIAM NOBLE, *examined by* Mr ALISON—Mr Noble, you are a shop boy in the employment of Mr Rymer?—Yes, sir

Where?—107 Portsmouth

Do you know the prisoner Burke by sight?—Yes, sir

You have seen him come about your shop?—Yes, sir

Do you know a man of the name of Hare?—Yes

There is a man of the name of Hare also comes about the shop?—Yes

What do you sell in your shop?—Groceries

Do you recollect an occurrence happening in the West Port of a body being found that made a great deal of noise some time ago?—Yes

One morning before that, do you recollect Burke being in your shop?—Yes; and I recollect a woman came in asking charity, it was on the 31st October

By the LORD ADVOCATE—Friday of the preaching week?—Yes

About what o'clock?—About nine o'clock.

Was Burke in the shop at the time?—He was

Well, sir, tell us what passed between Burke and the woman—what like a woman was she?—A little woman

What age might she be?—I cannot say.

Was she a girl of 15 or 19?—She was a middle-aged woman

Do you remember how she was dressed?—No

Was she dressed like a beggar?—I could not say.

Did she ask charity from Burke?—No

What passed between Burke and her?—He asked her name, and she said it was Docherty, and he said she was some relation of his mother's

By the LORD JUSTICE-CLERK—Was it that she was a relation, or might be some relation?—That she was some relation of his mother's

Did Burke say what his mother's name was?—No.

Did Burke and the woman seem to be acquainted when they first met, and do you recollect who spoke first?—I don't recollect

By the LORD ADVOCATE—Do you recollect if they seemed to have been acquainted?—I don't recollect

Well, sir, what happened?—He took her away with him

Did he say anything, and what did he say?—He said he would give her her breakfast

By the LORD JUSTICE-CLERK—And they went away together?—Yes, sir.

By Mr. ALISON—This was on the Friday morning?—Yes, sir

When did you next see Burke?—I saw him that forenoon.

Evidence for Prosecution.

William Noble

What did he do then?—He got some things
Bought some groceries?—Yes
Did he come back on the following day and get anything away?—Yes;
he came back on the Saturday, and bought a box
By the LORD ADVOCATE—At what time of day?—Between 5 and 6
In the evening?—Yes
What kind of a box was this?—An old tea-box
Look at that box there; (*witness was shewn an old tea box*) see if it was
a box like that?—I could not say
By LORD MEADOWBANK—Was it the same size?—Yes
By the LORD ADVOCATE—The same kind of box?—Yes
By the LORD JUSTICE-CLERK—Have your tea-boxes any particular mark
of Mr Rymer's upon them?—No, sir.
Did Burke pay for the box at the time or afterwards?—No, sir; it is
not paid yet
Did he take it away?—No, Mrs Laud or Hare took it away.
Did he say he would take it away?—No, he said he would send Miss
Hare.
He said that at the time he bought it?—Yes
By Mr ALISON—Well, sir, did Miss Hare come for it?—Yes

5 ANN BLACK or CONNOWAY, *examined by Mr Wood*—Do you live in
Western Portsburgh?—Yes, sir.
What does your house consist of, one room or more?—One room.
Not far from William Burke's, you go down a stair, don't you?—Yes,
sir
In getting in at the foot of the stair there is a passage, is there not?—
Yes, sir.
As you go in that passage, is your house on the right or the left?—On
the right.
Is the door of your house the first door that meets you going in?—
Yes, sir
On going on, is there another door on the same side of the passage?—
Yes, sir.
Another door a little farther in?—Yes, sir.
Does that door lead directly into a room, or into a passage first?—It
leads into a passage first.
Into another passage?—Yes
The house next yours is farther into the end of that passage?—There is
a room, and a door for the room
So there is a door for the inner passage, and there is a door at the end
of that passage into a room?—Yes, sir
The room is inclosed by two doors—now, who lived in that room in the
month of October last, about the end of it?—The last person that lived in
it was Burke.
Look at the prisoner at the bar; is that the person?—Yes, that is the
man that occupied it the last week of October.
Look at the other person at the bar; did you ever see her before?—Yes.
Did she live with Burke?—Yes.

Burke and Hare.

Ann Black or Connaway

M'Dougal is her name?—Yes

On the other side of the first passage, is there any house?—Yes, there is one

On your left as you go in?—Yes, and there are cellars, but no person inhabits them

Who lives there?—Mrs Law

By the LORD JUSTICE-CLERK—That is nearly opposite to your house?—Yes, sir

Examination continued—Did you ever see a person of the name of Hare coming about Burke's house?—Yes, sir

You know him and his wife?—Yes, sir

Do you know whether there was any lodger lived with Burke in the last week of October?—Yes, there was a man of the name of Gray and his wife

Did you, on the 31st October, see Burke at all?—Yes

That was Hallowe'en night?—Yes

What time of the day?—I don't recollect the time of the day.

Did you see him in the early part of the day?—Yes

Anybody with him?—There was a woman along with him

Try and recollect the time of the day?—I fancy it might be between one and two o'clock I just saw him passing by me as I was sitting by the fire The floor of the room being open, I saw him passing by, with a woman immediately behind him

Were they going in or out?—They were going into Burke's

Was she a stranger to you, the woman?—Yes, I never saw her till that time.

Was there anybody in your house along with you at that time?—Yes, sir, Mrs Law

The person living on the opposite side of the passage?—Yes, sir.

Did you go into Burke's house that day?—Yes, sir, about three o'clock

Was there anybody with him?—Nobody

Was there nobody?—This woman was sitting at the fire

Anybody else?—I do not recollect, sir; I did not sit down

Was she occupied in anything?—Supping porridge and milk

How was she dressed?—She had a short-gown, and a napkin tied round her head. They said they were washing at the time for her

And you cannot say she had more then on her?—No.

Did you see her shift when drying at the fire?—No, I do not remember seeing it

And you say there was nobody in the house at that time?—No, I do not recollect; at that time I never expected it to be called in question.

Burke was there, and M'Dougal?—Yes

Did you say anything to her?—I said, you have got a stranger, and she said it was a Highland woman, a friend of her husband's

You said, you have got a stranger; and she said, they had got a friend of her husband's, a Highland woman?—Yes

Had you any more conversation?—Not at that time

Then you left her, and went back to your own house?—Yes, sir

Evidence for Prosecution.

Ann Black or Connaway

Did the stranger woman appear to be sober at that time?—As she did not say anything, I could not say

You saw nothing to lead you to think she was not so?—Nothing, at that time.

Tell us what happened after you went into your own house?—After I went into my own house, and some time after the darkening, Burke's wife came in to me, and asked me to pay particular attention to her door, lest anybody should go in, until she came back. My husband was sitting at the fire, and he said he thought there was some person going into Burke's house

This was some time after Miss Burke went out?—Yes

Now, did you do anything in consequence of what your husband said?—Yes, sir, I took a light, and went in, and there was nobody there but the stranger

And you found nobody there but the stranger?—None, that I could see

Now, what did you do?—I said to her that I thought there was some person going into the house, and I came to see who it was. She rose and came out after me. She was something the worse of drink

Did she say anything to you when you was going along the passage?—She said she was going to St Mary's Wynd to see a person that had promised to fetch her word about her son, that she had promised to meet there

Anything more?—She wanted the name of the land of houses to return back, as she had no money to pay for her bed.

That was the name of the land of your houses?—Yes

Did she go away then?—I told her she must not go, as there were three lands, all belonging to one landlord, and she would not find her way back

By the LORD ADVOCATE—What did she say then?—She said that that man had promised her a bed and her supper.

What did she call him?—Docherty

That was Burke?—Yes.

Did you say anything more to her?—I said the police would take her up, as she was the worse of drink, if she went along the streets, and she then went into our house

Was there any conversation that passed betwixt you and her?—My husband having been in the army, asked her what part of Ireland she was from, and she told him, and he recollected a good many of the people about the place,—my husband having been there when in the army.

By the LORD JUSTICE-CLERK—They spoke about Ireland?—Yes

Did she say anything about going to Burke's?—She said that she was going there, as he had promised to give her a bed and supper, and she said that she intended to stop with them for a fortnight

By the LORD ADVOCATE—Did she say so?—Yes

Tell us how she explained his name, Docherty?—I told her that his name was Burke, and she would not allow me to say so; she said it was Docherty

Did she say why she thought so?—She said that that was the name he had given himself to her.

Burke and Hare.

Ann Black or Connaway

By Mr. WOOD—How long did she remain in your house?—An hour and a half.

What name did she give herself?—Docherty. And that her own name was Campbell, by her husband

Did anybody come into your house before she left it?—Yes, sir, Hare and his wife, and Mrs M'Dougal

Now, what was done after they came in?—Hare's wife had a bottle under her apron, and insisted that we should have a dram Burke's wife came in after.

Then there was nobody but Hare and his wife, and Burke's came in after?—Yes

Did you drink?—Yes, and they gave some to my husband.

Did M'Dougal come in before the spirits were touched?—Yes

Did she drink?—I fancy she took a share too, but I cannot say how much

By the LORD JUSTICE-CLERK—Did the stranger woman and M'Dougal partake of it?—Yes

You do not know whether she took any?—I dare say she did drink, but I cannot say

By the LORD ADVOCATE—Were they merry?—Yes Hare was dancing, and Mrs M'Dougal, and this woman

Was she quite well?—Only her feet She hurt them in dancing

Except her feet she was quite well, and they were quite well too, except in the dancing that she got them hurt?—Oh, yes, quite well otherwise

Did they all leave your house together?—No, sir, they did not

Who went away first?—I do not know; but I know Mrs Campbell was a long time in with me

And she would not go out of your house till Docherty came in?—Yes.

Did you see him then?—I had not seen him that night

By the LORD JUSTICE-CLERK—He had been out for some time?—Yes It was getting late, and I wanted her to go into her own house She bade me not be cruel to strangers

And you allowed her to remain?—My husband had to go out at half-past four in the morning, and I had to rise to make his porridge I was anxious to get her away, but she would not go till she saw Burke go into his own house Burke came in then, and I said "there is Docherty now."

By the LORD ADVOCATE—He was passing towards his own house?—Yes.

By Mr WOOD—At what time?—I dare say between ten and eleven

Did you go to the door to see where she went?—She went that way, (as into Burke's house), and I locked the door and went to bed

Now, did you sleep sound in the morning?—No, I did not.

What prevented you?—A disturbance in Burke's house.

When did it begin,—shortly after they had all gathered together?—Yes

At no long distance?—I could not exactly say, but it was not long

What kind of a disturbance was it?—They were fighting like

Did you go out?—No. The moment the woman went out I locked the door and went to my bed

When did you get up again?—I fancy between three and four I set the fire on, and went to bed.

Evidence for Prosecution.

Ann Black or Connaway

When did you get up in the morning again?—About eight.

Had your husband gone to work at the first time?—Yes, about half-past four.

Who did you hear first?—I heard Hare's voice in the passage, calling to Mrs Law in my house at that time.

She had come in then?—Yes.

Did she go to him?—No. She did not answer.

Did any other person come to your door?—None at that time.

Was there any other person came at that time?—Yes, a gill came inquiring after Burke at that time.

What was her name?—Paterson.

Is she among the witnesses to-day?—I believe so. She came asking for John, (meaning Burke).

What time might that be?—Between eight and nine. She asked for John, and she asked for Burke.

Did you direct her to Burke's?—Yes, sir.

Now, did you see M'Dougal shortly after that?—Yes, she told me that William was wanting me,—it was a little past nine.

Who did you understand was seeking you?—William Burke.

Did you go *ben* to Burke's?—Yes.

Now, who did you find in Burke's then?—Mrs Law, Mrs M'Dougal, and young Brogan.

What were they doing?—Burke had a bottle of spirits in his hand.

Was he drinking the spirits?—Yes; and he filled a glass to me, and I drank it.

Well, tell us what more he did?—He took the bottle with the spirits, and threw the spirits up from where he was sitting, towards the roof of the house.

There was a bed in the house?—Yes.

Did he throw any spirits about the bed?—His back was to the bed, and then he threw the spirits upwards.

Did he say anything on doing this?—He said he wanted it done, to get more spirits.

Did you make any inquiry about Campbell?—Yes, I asked M'Dougal what had become of the old woman, and she said Burke and her had been *ow'r friendly* together, and she had turned her out of doors that she had kicked her out of the house.

Did she say to you what time that happened?—No, sir; she made no remark, and I did not like to say anything about it. She asked me if I had heard it, and I said no.

By the LORD ADVOCATE—Was Burke present?—Yes, sir.

Well, did you say anything on that to him?—No, sir.

Do you recollect him saying anything about the woman at that time?—Yes, sir. He asked if I had heard about the dispute.

Did he give you to know what it was?—He said it was just a fit of *drink like*, but she was quiet enough now.

How long might that dispute last?—I could not say.

Now, at the time that you got up between three and four o'clock to

Burke and Hare.

Ann Black or Connaway

make your husband's breakfast, were they quiet then?—Yes, they were all like sleeping

And some time before that?—Yes.

Did you hear any noise at that time?—No

Did Burke's wife sing a song when you were in the house?—Yes

Did you see any straw lying near the bed?—Yes, sir.

Was there a quantity of straw lying at the one end of the bed?—Yes, sir.

Did you see any spirits thrown under the bed, or amongst the straw?—Yes, sir I saw him throw none but the time that I spoke of.

What time of day did you leave the house?—It might be after ten o'clock

When did you return to Burke's again?—In the afternoon

When was that?—Saturday

Did Burke's wife ask you?—No, but Mrs Gray, Burke's lodger's wife, did. I met her in Burke's—Burke and M'Dougal's

Then you went out again?—Yes

Did Gray's wife come to you again on the Saturday night?—Gray's wife had previously told me that a dead body had been found in Burke's house, and she came in near about eight o'clock, to take me in to see the body, but when I went into Burke's house, I was so frightened that I turned and came out All that I can say is, that I went in, but was so frightened that I went out again

(Witness spoke so low that she was inaudible to the jury)

LORD JUSTICE-CLERK, *(then read his notes to the jury)*—"At a later hour, about eight, Gray's wife had been telling her about the body, and she went to Burke's house to see what she had told her of She saw nothing but the straw, and was so frightened that she went away without seeing anything."

By the LORD JUSTICE-CLERK *(to the witness)*—Is that it?—Yes

By Mr Wood—Now, after that, did you see the prisoner M'Dougal?—Before I heard anything of that, and before Mrs Gray took me into the house, M'Dougal came to me, and said that that woman had been stealing things out of her house

What woman?—Mrs Gray And she insisted that I should pay attention to the door till she would come in again, as it did not lock

This was on the Saturday evening, about what time on Saturday was that?—I fancy it might be about six o'clock

What happened after that?—When I was making my husband's supper, Hare came to the door.

Was this on the Saturday night?—Yes, on the Saturday night

Now, what did he do?—He was going into Burke's, and I cried to him, there is no one there; and he came into our house.

Did he afterwards go to Burke's?—No, he went out.

Then M'Dougal came?—Yes; and I cried after her, had she got the woman Gray.

Did you afterwards go to Burke's door?—Yes.

Did you find it open?—No, it was fastened.

That was the inner door?—Yes

Evidence for Prosecution.

Ann Black or Connaway

Did you see anybody, after that, come out of Burke's house?—No; I just turned into my own house

After you had gone to Burke's door, and found it fastened, did you see anybody after that come out?—Yes, Hare came in to our house

Did you see M'Dougal?—Not at that moment

When did you see her?—After that again

Did you see M'Dougal before Gray?—Yes I went into the street, and when I returned I found M'Dougal standing in my house

Nothing passed?—Nothing

Then Gray came in, and you went into Burke's house, came out again, and went into your own house, and saw nothing?—No, sir

Did you see Burke after that?—I did not see him till a good bit on in the night

Now, had you any conversation with him then?—Yes, after eight o'clock, I spoke to him about the noise they had been making the previous night; my husband told Burke that there was a noise abroad, that it was reported he had murdered the woman, he laughed, and said he did not regard what all Scotland said about him

By LORD MEADOWBANK—Do you say he laughed very loud?—Yes, and Mrs Burke laughed very loud; and he said that he defied all Scotland to say anything against him

Did M'Dougal say anything?—She said that all the world could not say anything against him

At that time, did you see any policemen?—Burke said he was going to see the man that said it, and the policeman gripped him on the stair when he was going out

Cross-examined by the DEAN OF FACULTY—Before he went into the passage, where he met the policemen, he went out, when he met the man Gray, he was going to seek the man that said it, and that was Gray, and he met him along with the policeman

Did you hear what passed between him and the policeman?—No

Did the policemen take him into his own house?—Yes.

By the LORD JUSTICE-CLERK—When he said he was going to see the man who said it, did he refer to Gray?—Yes, my husband told him that Gray said he had seen a corpse in Burke's house; that he was going to get the policemen for him, and Burke said he would go and see if he could find him

By the JURY—When you went into the house, what was the cause of your alarm there?—Hearing tell of a murder frightened me

I suppose we are to understand that that referred to the conversation that Gray had with you, and nothing else?—Yes; and nothing else.

6. JANET LAWRIE or LAW, *examined by Mr DUNDAS*—Now, Mrs Lawrie, you live in a house in the same passage with the prisoners, did you live there in the month of October last?—Yes; in the same passage with John Connaway, his wife, and Burke and his wife.

Do you recollect on the 31st October last being in Connaway's house?—Yes, sir I recollect on the 31st October last being in Connaway's house.

At what time of the day was it?—About one o'clock in the afternoon

Burke and Hare.

Janet Lawrie or Law

Do you recollect at that time of seeing the prisoner, Burke, in the passage?—Yes, sir.

Was he alone, or was there any person with him?—There was a little woman following him.

Now, where did they go to, (Burke and the woman)?—They went into Burke's house

Did you observe a man called Hare, and his wife, in that passage, or that land, that evening?—Yes, sir

Did they go into Burke's house?—Yes, sir, I saw them in Burke's house

About what time in the afternoon might it be that you saw them there?—About six or seven

Was the little woman there likewise?—Yes, sir

At that time were they merry, dancing and drinking?—Yes, sir

Did you get any spirits?—Yes, sir

You were not long in Burke's house at that time?—No, sir, about twenty minutes.

What time did you go to bed, do you recollect, that night?—About half-past nine

At the time that you went to bed, did you hear any noise of dancing or singing?—No, sir

In the night did you hear any noise or merriment?—Yes, sir, after that

Was it long after you went to bed?—Some time

Did you hear singing and dancing, or was it scuffling or fighting?—Yes, scuffling or fighting

Did you hear any dissension previous to the fighting?—No.

In the course of the night you say you heard scuffling?—Yes.

Was there a great noise that followed?—Yes, there was

Could you distinguish any persons' voices in the scuffling?—I was not sensible of any person's voice but Burke's.

Did this noise last long?—It lasted for some time

And you fell asleep at last?—Yes, sir

Now, the next morning, did any person come into your house?—Yes, Mrs. Burke

For what purpose?—The loan of my bellows.

Did she say anything?—She asked me if I had heard Buike and Hare fighting *through* the night time

Now, do you recollect anything more about the fighting?—I asked her what she had done with the little woman

Now, give us the words that she used?—That "she kicked the d——d b——h's backside out of the door"

Did she say why she had turned her to the door?—Yes, that she had been using too much freedom with William

Meaning Burke?—Yes

Now, she went away after this?—Yes.

Did you see her again when she came back to your house in the morning?—Yes, about nine o'clock.

At what time was this first conversation?—About eight o'clock.

Evidence for Prosecution.

Janet Lawrie or Law

And when she came back at nine, she borrowed a dram glass from you, I believe?—Yes, sir

Well, did she ask you at that time to come into her house?—Yes, sir

Did you go in?—Yes

Who did you find there?—Hare was there, and Burke was there.

Was Mrs Hare there?—I am not sure I do not recollect

Was there a man called Brogan there?—Yes

Were Gray and his wife there?—Not at the time I went in, but they came before I left it

Was M'Dougal there?—Yes, sir

Did Gray and his wife come in before you left the house?—Yes, sir

Are you *sure* that both Gray and his wife came in?—Yes, sir

Now, did you remark anything particular that Burke did when you were there?—Yes, he took a bottle and some spirits, and sprinkled the spirits on the top of the house

Do you mean the roof of the house?—Yes

The ceiling of the room?—Yes, sir

There was a bed in the room?—Yes, about the bed too

Did he say why he did so?—Because none of us would drink

You said there was a bed,—did you remark any straw about the bed?—Yes, there was a good deal of straw about the foot of the bed

Do you recollect seeing Mrs Connaway in Burke's house?—Yes, Burke sent for her, and she came

Was that at the time the whisky was sprinkled?—Yes, sir

You say Burke was apprehended that night?—Yes

Were you shown the dead body in the Police-Office on the Sunday?—Yes, sir

Did you recognize that body?—Yes, sir

Whose was it?—It was the same woman that I saw in Burke's house on the Friday night

Cross-examined by the DEAN OF FACULTY—Do you know, Mrs Lawrie, that that straw that you speak of was used as a bed?—Yes, sir

Did the Grays lie there?—Yes

It had been used for some time as a bed?—Yes, sir.

7. HUGH ALSTON, *examined by Mr ALISON*—Do you live in the same land in which William Burke's house is situated?—Yes, sir, I live in the first flat upstairs, and Burke lives in the sunk flat below the shop.

The shop is between your house and his?—Yes, sir, exactly

Now, sir, do you recollect on the night of the 31st October, when you were going home, hearing any noise there?—Yes, sir, I did

What hour was it?—I could not speak to the exact minute, but it was about half-past eleven.

Were you going along the passage at that time which leads up to your house?—Yes, sir, I was.

You were going along the passage that leads to your house, on the line of the street?—Yes, sir.

What did you hear, sir?—I heard, as it were, two men quarrelling and

Burke and Hare.

Hugh Alston

fighting, making a great noise, there was a woman's voice that attracted my particular attention, the cry of a woman, of murder.

What did you do upon that, sir?—My wife, who was with me, went up to my house, and I went down and stopped a little upon the stair to see that there was no person upon the stair till I ventured down to the bottom.

You know Connoway's door?—Yes, I believe that is the door next to the passage.

Did you go as far as it?—Near to it, within a yard or so of it.

Now, tell us as distinctly as you can, the different sounds you heard when in that situation.

By the LORD JUSTICE-CLERK—You listened there?—Yes.

By Mr ALISON—Well, what did you hear?—I heard these two men making a great noise, as if wrangling or quarrelling. I heard no strokes or blows,—I heard a woman crying murder, but not in that way as I could consider her in imminent danger herself.

Well, sir, what more did you hear?—That continued probably for half a minute, or a minute; she still continued to cry murder,—it was a very strong voice for a female voice, standing there a minute or two, there was something gave a cry, as if proceeding from a person, or animal, that had been strangled.

That of a person, or animal, that had been strangled?—Yes, I could hardly distinguish it from that of a human being.

Well, sir, at this time did you hear any noise on the floor?—I heard these two men's voices, but I could not say that I heard anything else.

No blows?—No, just a great deal of noise they were making by speaking.

Very loud?—Yes.

Now, after this remarkable sound had ceased, did you hear the female voice still crying murder?—Yes; she struck upon something, I do not know what she struck with, but slapped the door as if crying for the police, and cried, "murder here."

Well, sir, did you remain any length of time there?—After this I went for the police, I was often afraid of fire, and I went for a policeman, but I could not find one.

Did you return to the stair then?—Yes, I did not go far down, I went down a little way.

Did you hear anything when you returned the second time?—I heard the men speaking, and the woman ceased to cry murder, I thought everything was over, they seemed to have removed to a greater distance, and the noise had ceased.

Now, in the course of the time you were listening, did you hear any wrangling or struggling at that time?—I might hear feet moving on the floor, but I can't say more.

A JURYMEN—I wish to ask the witness a question.

LORD JUSTICE-CLERK—Take a note of it. The counsel for the Crown and the prisoner must first be done.

By Mr ALISON—How far might you be from Burke's door when you heard the sound?—It could not exceed 3 yards or so, it might be about 3 yards, but I do not think it exceeded that.

Evidence for Prosecution.

Hugh Aleston

Do you mean the door of the house, or the passage that leads to the house?—The door of the passage that leads to the house

Will you be so good as tell us how far Burke's door is from that passage?—I never measured it, but I think it would be about 15 feet I was 3 yards from the outer door

There is a turn in the passage?—Yes, sir, there is.

Was the outer door shut?—I was not so far forward as to see that, it appeared to me that it was on that door the woman struck It was on the door of the passage, not the door of the room

You heard that a body was found?—Yes, in the evening of Saturday, about seven or eight o'clock

Did that circumstance of a body being found fix your recollection of what you have mentioned?—Yes, I recollected immediately

Cross-examined by the DEAN OF FACULTY—When you went for the police, where did you go to?—To the mouth of the passage above Burke's passage I saw one at the top of the street, but he was without my cry, and when I returned, I did not consider it necessary to get one, as the sound had ceased a good deal

Did you go down to the Grassmarket?—No

The woman that made the noise on the door, struck on the door, and called murder, did you believe the voice you heard came from her?—It was the same identical voice that called murder, that *took me* down the stairs.

That was not the voice of the woman, that struck on the door, if she cried at the same time, and said there was murder?—Yes, I think she said, "for God sake get the police, there is murder here"

By the LORD JUSTICE-CLERK—Are we to understand you to say, sir, that that voice that was uttering those cries, of a person or animal strangling, was different from that of the woman calling murder?—Yes, it was quite different

By the DEAN OF FACULTY—I think I have it down quite distinct, it was on the door, not the outside door, that the woman was striking, how do you know that, when you was 3 or 4 yards from that door?—I tried the experiment since on the door of the room, a person was shut in, and he struck the side of the room door, and I said that was not the sound, but the outer door.

By the JURY—You mentioned having heard cries of murder proceeding from the passage; do you think they proceeded from Burke's house?—I have no doubt of that, sir

8 ELIZABETH PATERSON, *examined by Mr. Wood*—How old are you?—Going in sixteen

Will you look at the prisoner here, (*Burke standing up*), Burke you have known in one instance?—Yes

You live in Westor Portslough?—Yes.

Do you remember seeing him on Friday, the 31st day of October last?—Yes.

He came into your mother's house?—Yes

Your brother lives with you?—Yes.

Burke and Hare.

Elizabeth Paterson

What was his name?—David Paterson

What time did he come?—He came at ten o'clock

Who did he seek then?—My brother David I told him he *was* not in, and he went away

Did you, next morning, go to inquire for Burke?—Yes, my brother sent me down for him.

You got a direction to his house?—Yes

Who did you ask for it?—Mrs Law

9. DAVID PATERSON, *examined* by Mr Wood—Where do you live Paterson?—No 26 West Port.

What is your occupation?—I am keeper of the museum belonging to Dr Knox

Would you look at the prisoner here, Burke, (*Burke standing up*), do you know him by sight?—Yes, I do, sir

Do you recollect at what hour you went home on the night of Friday, the 31st October last?—It might strike twelve, sir, or a little before it.

Now, did you find anybody at your door?—Yes

Who?—The prisoner at the bar.

Was he rapping at the door?—Yes, sir

Had you any conversation with him?—He told me that he wanted to see me at his house

Did you go with him to his house?—Yes

Did you find any person in it?—Yes, both men and women.

How many men?—Two, there might be more

Two besides Burke?—No, Burke and another

Did you see any women?—I remember two, sir

Now, sir, after you went in there, what passed betwixt you and Burke?—He told me he had procured something for the doctor, pointing to a corner at the head or the foot of the bed, I do not know which

Was there any straw there?—Yes

By the LORD ADVOCATE—Was it to that place where the straw was that he pointed?—Yes, my lord.

By Mr. WOOD—Did he make that observation loud enough that the other persons in the room might hear him?—They might, but I am not sure of that.

Was it in a whispering voice?—It was in a low voice

How near were you?—I might be touching his clothes

Was there any observations made by any of these persons?—No, none.

Was anything shown to you at that time?—No.

What did you understand to be the meaning of what Burke had said to you, when he said that he had procured something for the doctor?—I understood that he alluded to a dead body, a subject, but I had no proof of it.

He said that, pointing to the head or foot of the bed where there was some straw?—Yes.

What were his words?—I think he said that he had procured, or there was something for the doctor

Did he say to-day or to-morrow?—To-morrow

Evidence for Prosecution.

David Paterson

What quantity of straw was lying at the bed, was it such as a body might be concealed under it?—I think there might.

Now, will you look at this woman at the bar, M'Dougal (*M'Dougal standing up*).

Was she one of the women?—Yes

Would you know who the other woman was if you saw her now?—Yes
(*Mrs Hare was brought into Court in custody of a Macer, and produced to witness*)

Is that her?—Yes.

Would you know the other man?—Yes, I think I would know him also.
(*Hare was also brought into Court, and produced to witness*)

Is that him?—Yes

Then you went home?—Yes.

And you had no farther conversation with him?—No farther than saying good-night, or so

But nothing farther about the thing he said he had got?—No more

You sent your sister for Burke?—Yes

Did he come to your house?—Yes

About what o'clock?—About nine

Mis Hare was the other woman that was in Burke's house?—Yes

And Hare was the other man that was in Burke's house?—Yes

Did you know the name of these two persons?—Yes, by the name of Hare.

Now, Burke came to your house next morning about nine o'clock—did he accompany anybody, or bring anybody with him?—No

Well, what passed?—I told him if he had anything to say or do with Dr. Knox, to go to himself and settle with him

By the LORD ADVOCATE—You mean by that, that if he had any subject, to take it to him?—Yes.

By Mr WOOD—What did Burke say?—He promised to do so, and went away

Well, when did you see him again?—I again saw him standing in Dr. Knox's room with Dr. Knox, and one of his assistants, Jones; they were merely standing together

Is Dr Knox's room in Surgeons' Square?—Yes

About what hour?—It might be between twelve and two.

Well, did anything pass in your hearing at that time?—He told me he had brought something for Dr Knox.

Was it Burke or Hare?—I am not positive, but one or other of them told him they had a subject, and I got orders from Dr Knox if they brought any package, I was to take it from them.

Did you remain there?—I called in the proper place in the evening about seven o'clock, and they brought a package,—Burke, Hare, and a porter.

Do you know the porter by sight?—I have since heard that his name is M'Culloch,—I have seen him here to-day

Had they anything with them?—A box, apparently the remains of an old tea box, or tea chest.

Such a box as that, (*pointing to the old tea box*)?—Yes, such a tea chest as that

Burke and Hare.

David Paterson

Then, what was done?—They carried it and put it into a cellar belonging to Dr Knox, Mr Jones was present We locked the door,—and Mr Jones and I walked out to Newington, and told him what the men had brought.

Dr Knox resides at Newington?—Yes

Did Burke and Hare go along with you?—They had followed us,—we saw them at the end of the road leading to Newington

Before or behind you?—I am not certain whether before or after

But when you came out of the doctor's house you found them there?—

Yes

Did you observe any women there?—I did not observe any, but they might have been there

By LORD MEADOWBANK—Not the porter, but just them two?—The porter also, my Lord

By Mr. WOOD—When done, and when you met them there, what passed?—Dr Knox had given me £5 to give to the men I had previous orders to divide the money and give each a share I went to a change-house and obtained change; I gave each £2 10s, and on that, Hare and Burke lifted up their share, and the porter got his share

Was this the whole price?—No, they were to call on Monday, when Dr. Knox would have seen what they had brought

When they were to get more?—I do not know if any bargain was made, but I understood, generally, the price to be £8.

And you parted with them there?—I parted with them there

By the LORD ADVOCATE—Did you see any women there?—None.

Neither before you went in, nor afterwards?—None, my Lord

Did you see any women waiting about the square?—None

Did you see any women loitering about the public-house?—None, my Lord.

You did not see them join any women?—No, my Lord, I went another road.

Next morning, did anybody call upon you?—On the Sabbath morning, about seven o'clock, the police Sergeant-Major called upon me, along with Lieutenant Paterson It was Sergeant-Major Fisher

And you went to Dr Knox's premises along with them?—Yes

And you opened the cellar and gave them the package that these people had left there the night before?—Yes

It was then in the same state as it was in when you got it?—The same, my Lord, as I received it

Was it roped?—Yes

And the ropes were still about it?—The ropes were still about it.

Did you then open the box?—Yes.

What did it contain?—The body of an elderly female.

Was it fresh?—Apparently fresh.

Had it ever been interred?—No, my Lord

Did you open the top of the box first?—I could not positively say whether it was the side or the top of it

Describe the situation in which it was?—When we opened the box it was doubled up,—all the extremities doubled upon the chest and thorax.

Evidence for Prosecution.

David Paterson

How was the head pressed down?—The head was pressed down on the breast

Did it seem to be pressed down for want of room?—Yes, it did

Was it taken out of the box?—Yes, my Lord

Will you describe the state of the body, and appearance of the countenance?—Yes, my Lord I examined all the body, and stretched it on the table

Describe it about the face?—I found the face a very livid colour

Was there any blood upon it?—There was blood flowed from the mouth.

You are a medical person Did that appearance of the countenance indicate strangulation?—It did, my Lord, or suffocation, in my opinion.

And what other appearances had it?—I found no other external marks or bruises upon the body, that might have led me to suppose it to have caused death

Did you find any internal derangement?—I was not present at the examination

By LORD MEADOWBANK—Did the eyes project?—No, my Lord

The tongue hang out?—No, my Lord

By the LORD ADVOCATE—You say the head was a good deal pressed down by the want of room?—Yes, my Lord

You can't say more upon it than that, of course?—No, my Lord.

By LORD MEADOWBANK—Did you observe any marks about the mouth?—No, my Lord.

Was there plenty of light when you examined it in the morning?—Yes, my Lord

By the LORD ADVOCATE—About the lips or nose were there any signs of pressure?—They were dark-coloured, my Lord, and some spots of blood.

Any marks about the throat at all?—None, my Lord

Cross-examined by the DEAN OF FACULTY—You said that the face indicated strangulation or suffocation?—Yes, my Lord; by the blood, my Lord.

Does the blood of a strangled person, or a suffocated person, tend to give the face a livid and dark appearance?—Yes.

Is that the reason?—Yes

Paterson, you have seen the man Hare before, that came into Court, and you looked at?—Yes, my Lord.

You know that Dr. Knox had dealings with him for dead bodies?—Yes, my Lord.

Before that time?—Yes, my Lord.

You know whether he had dealings before with Burke about subjects?—Yes, my Lord

Did they seem to act conjunctly?—Yes, my Lord.

Who appeared to be the principal party?—I have seen both in their turn.

You have seen both assume the principal part?—Yes, my Lord

Did they frequently bring subjects that had not been interred?—Frequently, my Lord; I suppose they had not been interred

By LORD MEADOWBANK—The same persons?—Yes, my Lord

Is it frequent that such subjects are brought to the lecture-room of

Burke and Hare.

David Paterson

some anatomist?—Yes, my Lord, it is frequent, both by them and by other persons.

Both by them and other people?—Yes, my Lord

By the DEAN OF FACULTY—Does it consist with your knowledge, from acting for Dr Knox in this way, that there are people in town that sell dead bodies that have not been interred?—I have heard it, my Lord. I have known gentlemen that have attended poor patients that have died, and then they afterwards gave in a note of their place of abode to Dr Knox, which he has handed to these men to get their bodies

LORD MEADOWBANK—It is no evidence of the fact

By the DEAN OF FACULTY—Have you seen young men that have attended these places deliver these addresses to Dr Knox?—I have got one from Dr. Knox to give to these men

A label to the house of the deceased,—to the house of the late patient, and you have given it to them And in that instance, do you know that the subject was brought to you?—Not in that instance

LORD ADVOCATE—I would be the last person in the world that would interfere with the examination for the prisoner, but surely it is not *cross* He can summon the witness, and call him again

DEAN OF FACULTY—I am entitled to cross-examine him

LORD ADVOCATE—Independent of that, it has no bearing in this case.

By the LORD JUSTICE-CLERK—You have told us that a minute examination was made of that body What did you do with that body?—I gave the Lieutenant of Police the key of the room where it was, and left it in his charge, and I never saw it afterwards

Where is that room, sir?—A room and cellar in Surgeons' Square

By the DEAN OF FACULTY—You say you laid down the money in shares, to prevent quarrelling?—To prevent disputes

You saw the £5 equally divided?—Yes

Have you known quarrels between Burke and Hare, respecting such booty?—I have seen them drunk on the streets, and have heard disputes and quarrels between them

More than once?—Yes, my Lord

Often?—Yes, my Lord

Had the one complained to you against the other, or to Dr Knox, with your knowledge?—Not to my knowledge, my Lord.

By the JURY—When he said he had got something for the doctor, might his wife have heard it?—She might have heard it.

Did she make any remark?—No.

By the LORD ADVOCATE—How far was she from him?—She was not far from her husband, the room was small, and she could not but hear

By LORD MEADOWBANK—You mean by his wife, that woman at the bar?—Yes, my Lord

By the LORD JUSTICE-CLERK—When you came home that night, and went to them, near twelve o'clock, were they in a state of intoxication?—Yes, my Lord, they appeared to be, both of them

Both the man and the woman?—Yes

By LORD MEADOWBANK—Did they know what they were about?—They

Evidence for Prosecution.

David Paterson

were able to stand up; but I do not know if they knew what they were about

By the LORD ADVOCATE—You accompanied Burke from your house to his house?—Yes

Did he walk tolerably straight in that way?—Rather a little *drunkish-ways*

10. JOHN BROGAN, *examined by* Mr ALISON—You know Burke the prisoner, and Mrs M'Dougal, his wife?—Yes

Do you remember last Halloween evening?—Yes

Were you in Burke's house in the course of the evening of that day, betwixt six or seven o'clock?—About four o'clock.

Who was then in the house at that time?—That man and his wife, (*pointing to the prisoners,*) Hare and his wife, and there was another man, Gray, and his wife

How long did you remain at that time?—Till seven.

During that time, was there any other person came in?—There were two strange women in when I went in first.

Did you see an old woman there?—Yes.

Did this old woman remain as long as you remained there?—Yes, sir

When you did next return to Burke's house?—Two o'clock in the morning

You had not been in the house in the interval, betwixt seven and two?—No

Who did you then find there?—Burke and M'Dougal, and Hare and his wife

Did they lie in the bed?—Yes, Hare and his wife were lying in the bed.

Where were Burke and M'Dougal?—They were standing *out ow'r* next the window

Were they talking together?—Yes, they were

Did you fall asleep in the house?—Yes, I fell asleep.

Did all the rest fall asleep too?—Yes

Where did you lie?—Burke's wife and the other woman and me lay near the fireside, the two women were at the fireside, and the two men were in the bed

When did you leave the house?—About seven in the morning

What time did you come back?—About nine o'clock.

In the morning of Saturday?—Yes

Who did you find there?—Gray and his wife, Burke and his wife, and Hare and his wife

Did any person ask about the old woman?—Yes.

Who was it?—The person that came in for a light

A man or a woman?—A woman.

Well, what did the woman say?—She asked what had become of the *spawwife*.

Now, what did M'Dougal say?—She said that she had been very *fashous* during the night, and that in the course of the night, Hare and Burke began fighting, and the old woman called out murder

Say what was the answer?—She seemed to be very *fashous*; she gave

Burke and Hare.

John Brogan

her warm water, and then cold water, and then she asked for a flannel clout and soap to wash herself with, to make her white; and then the two men began a fighting, and she roared out murder, and she gave her a kick in the —, and set her to the door

Who called out murder?—The old woman,—and she thrust her out of the house, for an old Irish *lummer*

Were you there again in the course of the forenoon, that is, in Burke's, on Saturday?—Yes, about nine o'clock in the morning

Did you see any sprits sprinkled?—Yes

When?—Before nine

When you came back?—Yes.

Who sprinkled?—William Burke

Where did he sprinkle it?—First on the roof of the house, then on his own bosom, and then he flung it under the bed

Had he anything in his hand, when he flung it under the bed?—A cup with whisky in it

What time was this?—Before nine

Did he go under the bed?—Yes

Had he the cup?—Yes

Was there whisky in it?—No

Burke went out leaving you sitting on the chair?—Yes

Was that near the bed?—Yes

You did not sit long there when he went out?—No

When you came in, did he tell you to sit down there, and not leave that chair?—Yes, as he was going out for drink

Was M'Dougal in the house at that time?—Yes

Were the Grays there?—Yes

Must M'Dougal have heard the direction to you to sit upon the chair till Burke came back?—Yes

But you went away?—Yes

And who did you leave in the house when you went out?—M'Dougal, Gray, and his wife

11. ANN M'DOUGALL or GRAY, *examined by Mr Wood*—Do you know the prisoners, Burke and M'Dougal?—Yes, sir

You and your husband lodged in the house?—Yes

Five nights in October last?—Yes, sir

Do you remember on the 31st of October last seeing a stranger there?—Yes

A poorish-looking woman?—Yes

How was she dressed?—She had a dark gown, and a red striped bed-gown on below it.

The black printed gown above it?—Yes, sir.

(*The witness was shown the gown and bed-gown, which she identified*)

Did she say her name?—Docherty

You saw her there once or twice in the course of Friday?—Yes I was in the house till very near dark at night

You were going in and coming out of Burke's house?—Yes, sometimes going messages.

Evidence for Prosecution.

Ann M'Dougall or Gray

By the LORD ADVOCATE—Did Burke say anything about her,—how he had met that woman?—He said he had met her in a shop about *nine* that morning

You and your husband were lodging in this house, were you?—Yes, and we went home to another

You did not lodge there that night?—No, Burke put me out, saying, that “you and your husband have had a difference, and been boxing,” and he would not have his house made a boxing-house I told him I was not boxing, I was checking the child, and that was all the noise that I heard, and he told us that we must go out of the house that night directly.

Were you to go for good and all, or for a time?—He did not say so directly

Did he say that you should leave the house then?—Yes

What time?—I could not say the time exactly, I think between five and six

Did he leave you to find your lodgings for yourself?—No, he said he would pay my lodgings for me that night.

Did he point out to you where you were to lodge?—Yes, William Hare's

You were to get your lodgings there?—Yes, that night, sir

Did you go to Hare's then?—Yes, I went with Hare's own wife

She had been in Burke's at the time?—Yes, sir.

Did you remain at Hare's, or return to Burke's house?—I returned to Burke's house about nine o'clock, I returned for some of my child's clothes

Did you find the woman Docherty there?—Yes, she was singing, and Mrs Burke and Mrs Hare were dancing

Did you leave her there?—Yes, I left her there

Did she seem to wish to go out of the house?—Yes, in the course of the day

Who kept her?—Mrs Burke wished her to lie and take a sleep in the house

Did Burke go out when you was there?—No, I did not stop any length of time

Hare and Burke were drinking, and the two women dancing?—Yes.

What time did you return to Hare's?—Shortly after.

And then, on going to Hare's, you went to bed?—No, I did not go till eleven o'clock.

Did Hare and his wife come home that night?—Yes; they came home and took their supper; and Mrs Burke then came in and took some supper, and then Hare and his wife went out a little after.

Hare did not return that night?—No, sir

Now, when did you meet them next morning?—I do not recollect what hour it was; but the first thing that I heard, was William Burke seeking for my husband.

What was he wanting with him?—To give him a dram of spirits.

Well, did you go after that to Burke's house?—Yes; me and my husband.

What o'clock might that be?—Past nine o'clock on the Saturday morning.

Burke and Hare.

Ann M'Dougall or Gray

Who did you find there?—Mrs Law, and Mrs Connoway, and one of the name of Brogan, and Mrs Burke, and Burke also

Was the old woman there?—No; and I asked where she was.

Who did you ask at?—I asked at Mrs Burke

What did she say?—She said she was too impudent, and she turned her out

Did you say anything in answer to that?—Perhaps she had got too much liquor, and she had not known what she said

Was the old woman in liquor the night before?—Yes, she was

After you got into the house in the morning, was you looking for any part of your child's clothes?—Yes, for the child's stockings

Where did you go?—To the corner where the straw was lying

Well?—Burke asked what I wanted there, I told him I wanted the child's stockings; and he said "Keep out there," with an oath

Was there any whisky going at that time?—Yes, sir.

What was he doing with it?—William Burke was drinking some of it, and throwing it up to the roof of the house, upon the bed, and below the bed.

Did he give any reason for doing so?—That he wanted the bottle *toom* to get more.

Did you see him pour any whisky into a cup?—He went with it three times under the bed; he put it into a cup, and went three times under the bed, and put some on his breast

Was there anything said about potatoes?—It was William Burke The potatoes were under the bed I went in below the bed, and he asked me what I was doing there with a lighted pipe; to come out and he would go in himself. I said there was nothing in it, and I collected them myself

Where was the straw lying?—At the foot of the bed, in a little corner betwixt the end of the bed and the wall

How long did you remain in the house?—I was out two or three times in the middle of the day

When you came back at any time, did you find Brogan there?—Yes, Burke told Brogan to sit upon the chair till he came back again

The chair was near the straw?—Yes

Was your husband there at the same time?—Yes, sir.

Burke, you say, went out at that time?—Yes, sir

Did Brogan stop in?—No

Had you been desired to clean the house at all?—I cleaned the house, but I was not desired to do it

Did he say anything to that?—He said never to mind, it would do; and I said it would be better to be washed and sanded

Did he say anything about the corner?—He ordered Brogan to sit at the corner, and not to let any person near it

He did not say to let any person there?—He just told him to sit there. After Burke went out, Brogan went out after him

Was you and your husband then left alone?—Mrs M'Dougal was along with us, she was stretched on the bed

Now, what did you do after Burke had gone out?—I went to look for Burke, but I could not find him I went out again and met Burke

Evidence for Prosecution.

Ann M'Dougall or Gray

coming up the West Port; he went into one M'Kenzie's to get a dram, and told me 'o go home, and he would be immediately after me

Who did you find there?—Brogan and Mrs Burke

Did you discover a dead body in that house at the time?—Yes, in the darkening

Who was in the house at that time?—Mr Law's servant girl.

Was that long after Burke went out?—About darkening.

Where did you find it?—Under the straw at the foot of the bed

Had you been looking on purpose?—Yes, I was looking on purpose. I thought there was something that was not right, because he was throwing about the whisky I thought something was not right, and the first thing I got, on lifting up the straw, was the woman's right arm.

What woman?—Mary Docherty

That was the woman you had seen the day before?—Yes

Were there any clothes upon her?—Not a stitch

Was there any blood visible?—Yes, my husband lifted the head by the hair, and saw the face a little over with blood.

Where?—About the mouth and on the one side of her head

Was there much straw upon it, or how was it lying?—On the right side, sir, with her face to the wall

Did you leave it there?—Yes, just threw the straw upon it My husband went away before me, he met Mrs Burke on the stair, I went out immediately after.

Did you see him meet her?—Yes.

What passed at that time?—He asked about the body, and she told him to hold his tongue, and she would give him a few shillings, and if he would be quiet, it might be worth ten pounds a-week to him.

Did you say anything about the body?—I turned back and went into the house

What passed then?—I spoke to her about the body, and she bade me hold my tongue

Did you say what body it was?—I told her it was the woman's that was well last night, singing and dancing on the floor

Did anything more pass?—She bade me hold my tongue,—she did not know that I heard her speak to my husband,—and she said she would give me 5s. or 6s. if I would hold my tongue.

What more?—She repeated the words over again; and if I and my husband would be quiet, it would be worth £10 a-week to us; and I said, God forbid that I would be worth money with dead people

Did you give information after that to the police?—It was my husband.

Did you see Burke after that?—No, sir.

By the LORD ADVOCATE—Did you see the body in the police office?—Yes.

The same body?—Yes

Was it old Mrs Docherty?—Yes

Did you see Mrs Connoway at all, that day?—Yes.

Did you see her after the body was found?—Yes

Was the body there then?—Yes, I sent her forward to the corner to see it, but I did not see it, I cannot say whether it was there or not, sir.

Cross-examined by the DEAN OF FACULTY—Mrs Gray, let us go back to

Burke and Hare.

Ann M'Dougall or Gray

the beginning of the story Where did you sleep on Thursday night?—On the bed at the side of the press

You say you were in Burke's all the Friday forenoon?—Yes, sir; I was not out in the forenoon I saw the deceased woman's bed-gown drying She washed them herself, that was Docherty, and dried them

Did you not go out all the forenoon till about darkening, when you left it?—Only for a stoup of water, sir

There is a well in the court-yard, is there?—No, in the West Port.

Now, you went away to Hare's about dark, you said you came back about night?—Yes, for my child's clothes

Nobody came and asked you to come down?—No

Nor your husband?—Not that I know of

Did you hear anything of a merry-making in Burke's house?—Nothing; but as I thought it was Hallowe'en night, they did not wish me amongst them

Did your husband go back with you when you went for the clothes?—Yes.

Now, then, it was about nine o'clock when you went back the second time?—Not passing a few minutes

Was it not in Burke's that the dancing and singing was?—Yes

You know Mrs Connoway?—Only by sight

Was she there?—Not that I saw, sir

Endeavour to recollect, was she there or not at that time?—I do not recollect, she might, but I do not remember of seeing her

Now, you went away in a few minutes You said that Mrs. Burke, or M'Dougal, came afterwards to Hare's house?—Yes.

And Hare came home?—Yes.

Did Mrs Hare come home?—Yes

Did M'Dougal come?—She came in a few minutes after

Recollect about what time that was?—I could not tell you, sir, the hour; it was not very long after I left Burke's house the first time; I left it at the darkening

Was it before you went down at nine o'clock?—Oh, yes, sir

It was before you went back for the clothes?—Yes; before I went back for the clothes

Now, be so good as recollect, when they came to supper there, did not they ask you to come down and get some sport with them?—No.

Next morning, you said that Burke came up to your house, and asked you and your husband to come down?—He did not ask us to come down, when he gave us a dram that morning, but my husband had seen Burke afterwards on the street, and he told him to come down with me to breakfast

Now, when you went down to breakfast, did you see Hare and his wife there?—No.

Are you sure Mrs Hare was not there?—No, not in the morning.

Was she not in the bed?—No

She had come up to her own house, and she came up before you came away to your breakfast?—Yes, long before I came away.

What time did she come up?—I do not know.

Evidence for Prosecution.

Ann M'Dougall or Gray

When did you get up in the morning?—About eight o'clock

Now, you told us a good deal of what M'Dougall said when your husband spoke to her on the stair, and you went back into the house?—Yes

Did M'Dougall say anything else?—Yes, she said, “ *My God, I cannot help it* ”

Was that after you went back into the room again?—Yes, when I went back and left my husband going away with the bundle.

Was he present at that time?—Not at that time

Did she say the same words on the stair?—Yes

By the LORD JUSTICE-CLERK—She told you and your husband, that she would give you two or three shillings if you would be quiet, and if you would be quiet, it would be worth £10 a-week to you, did these words, *my God*, follow or precede that?—It followed that

What was your reply?—I said “ You surely can help it, or you would not stay in the house ”

Did she make any reply to that?—No, sir

By LORD MEADOWBANK—Am I to understand that she said these words to you, now mentioned, “ *my God, I cannot help it* ”, did she say these words after her offering the shillings, and promise of money, and you saying, God forbid that you would do so?—It was after that, that she said that she could not help it.

It was to your reply, “ for the like of that,” that she said that she could not help it?—Yes

Mr ROBERTSON—Request the witness's particular attention to that, my Lord.

By LORD MEADOWBANK—When you met the woman coming up the stair, what did she say?—When my husband went up the stair, he met her, and mentioned to her that he had found a corpse in the house, and she said hold your tongue, and she would give him five or six shillings, or it might be only two or three, and she said that he might be worth £10 a-week if he would be quiet, and he said, God forbid that he would be worth that, for he could not keep it on his conscience. She came down the stair, and she went into the house, and I asked her what she had been about, I had found such a thing in the house; and she made the same reply as to my husband; and I said, “ God forbid that my husband should be worth that for dead bodies ”, and I asked her what did she mean by bringing her family into disgrace by it; and she said, “ *My God, I cannot help it* ”

I think you said in giving that conversation before, that you mentioned to M'Dougall that it was the body of the woman you had seen in good health before. Did she say anything to that?—No; she made no reply

She said nothing as to how she came by her death?—No, she said nothing.

12. JAMES GRAY, examined by Mr DUNDAS—You and your wife lived with the prisoner Burke, in the end of October last, five nights?—Yes.

On the 31st of October, did you and your wife sleep there?—No; not on the night of the 31st October.

Why?—They desired us to go out

What time of night was that?—It was in the afternoon. He told us

Burke and Hare.

James Gray

we must go out that night, that he had provided lodgings for us in another house; and desired us to come back next morning to breakfast

He gave no reason for that?—Not to me

Did he take you to any house where to get lodgings?—Yes, he took us up to Hare's house, and fixed the bed where we were to sleep in, himself

In the course of that day, in the course of that Friday, did you observe a strange woman he brought into the house?—He did, in the morning He said that he had met with her in a shop in the West Port My wife was making breakfast at the time, and he desired that some breakfast should be made for her likewise

Did he say why he did this?—He did not at that time, but he said something afterwards He said he suspected that she was a relation of his mother's, as she was of the same name, and from the same part of the country.

That was on the forenoon of Friday?—Yes, sir.

You told us that he took you to Hare's house?—Yes

Had you occasion to return in the evening again to Burke's house?—Yes, I think about nine o'clock

For some of your children's clothes?—Yes, sir

Whom did you find in Burke's house?—Burke and his wife, Hare and his wife, and a stranger woman.

Did you return back to Hare's to sleep, and leave all those individuals in Burke's house?—Yes, we did, sir, and went to sleep.

Next morning did you see Burke?—Yes; and he asked how we rested, and I told him very well

He asked you to come to breakfast?—Yes, and I went back and got my wife, and we went down to breakfast

In the course of that forenoon, (Saturday morning)?—Yes

Were you present in the afternoon when your wife found the dead body in the room?—I was, sir

What time was this?—About darkening

Was it about five or six?—I dare say it might be between five and six. I could not exactly detail the hour

Where was the body found, in what part of the room?—It was found in one corner at the foot of the bed, with the head to the wall, and the feet below the bed.

By the LORD JUSTICE-CLERK—Amongst the straw?—Yes, sir

Did you recognize the body?—I did, sir I knew it to be that of the woman that we saw there the night before

On this discovery, did you remain in the house, or did you quit it?—“I packed up the things that I had in the house, and went out, when I met Mrs. Burke.

That is M'Dougal, the prisoner at the bar?—Yes

What passed?—I asked what was that she had got in the house; and she said, what was it? and I said, “I suppose you know very well what it is.” She fell on her knees, and said—

Did she drop in a supplicating attitude?—In a supplicating attitude, imploring that I would not inform of what I had seen

Did she offer you any reward for that?—She offered me some money,

Evidence for Prosecution.

James Gray

five or six shillings, to put me over till Monday, and there never would be a week after that, but that I might be worth £10 a-week.

What did you do upon this?—I said my conscience would not allow me to do it. After I came back, I heard her in the room, narrating the same words to my wife.

What were these words she said to your wife?—They were words very nearly to the same purpose as those to myself, though they were not exactly the same.

Did she say she could not help it?—Yes, she said so.

Was there any reply made to that?—No, sir.

Not upon the stair?—No, indeed. I did not stop long with her.

Now, after this conversation in the house, did your wife and you leave it?—We did, sir.

And did Mrs Burke, or M'Dougal, follow you?—She followed us, sir, and when we got out to the street, we met Mrs Hare.

Now, what happened there?—We met Mrs Hare there, and she inquired what we were making a noise about, and said, "Can't we go into the house, and decide our matters there, and not make a noise about them here?"

And you went into a public-house, and stopped there some time?—Yes; and I went and gave information at the police-office.

By LORD MACKENZIE—Were you in the house when the body was found?—I was.

Did you observe the face of it?—Yes, I turned up the face, to see what like it was. There was a little blood on the face.

Were there any marks upon it?—It did not appear to be marked, and so soon as I saw it was the person that was there the night before, I did not take time to look at it.

Was it quite naked?—Quite naked.

By the LORD JUSTICE-CLERK—You were quite clear as to the body?—Oh, yes, my Lord.

Cross-examined by the DEAN OF FACULTY—What time was it that you and your wife left Burke's on the Friday night first?—I suppose it might be about five o'clock, but probably it might be a little after it.

Did you see him that night again before nine o'clock?—Yes, he came up to Hare's house.

About what time?—It might be about seven, if I recollect; but I am not sure of the hour.

Was Hare there at that time?—No, neither Hare nor his wife were there; they were in his house, and came in afterwards.

Was Burke there at the supper?—No, but Mrs Burke was.

What time was it that Burke came there?—I think about seven.

Had the Hares left it at that time?—I cannot be certain as to the hour that he came there; but I know he came there that night, after the Hares, but went out again.

When Burke came up there about seven, did he ask you to go to his house?—No, he fetched a copper measure, with some liquor in it, that night at seven.

Did he sit with you any time?—Only a very short time.

Burke and Hare.

James Gray

What brought him there?—I do not know, except to give us this liquor that he brought to us, for he left it with us

I think you said he came on the Saturday morning Did he then ask you to come down to breakfast?—I rose directly out of bed, and he desired Hare to give us a dram, and twice he did so I went out a little afterwards, with the child in my arms, and I saw Burke standing in the shop, and it was then that he asked us to come down and get breakfast

13 JOHN M'CULLOCH, *examined by* Mr ALISON—You know the prisoner Burke?—Yes

You know of his coming to your house on Saturday, the 1st of November, requesting you to come to his house and carry something?—Yes

About what time?—Six o'clock

On Saturday evening?—Yes

Did Burke say what it was to carry?—No, my Lord

Did he tell you where to go first?—He told me to follow him

And you followed him accordingly?—Yes, my Lord

Where did you go to?—To the West Port.

Did you go to Burke's own house, or any other house first?—To his own house first

What did you get there?—A box

What size of a box was it?—Like a tea-box

By the LORD ADVOCATE—Tell us more particularly what happened before that—before you removed the box?—When coming to the end of the bed, he took some straw off it, and he took the sheet and he put it into the box

And what did he take off next? What did he take out of the straw?—I cannot say.

Did you see him put nothing in the box?—The sheet

Did he take anything like the person of a human body?—Yes; I think it was something like the person of a body

By LORD MEADOWBANK—You have no doubt that it was a body, in short?—No, my Lord.

Did you see anything of it at all?—No, my Lord, but when I was going to lift the box, there was something like hair that I felt.

And did you put that into the box?—Yes, and there was a little straw put over it, and he ordered me to take it away

Did you put the hair in the box?—Yes.

By the LORD JUSTICE-CLERK—Recollect you are on oath, and you should understand distinctly, sir, that whatever concern you might have had in it, you are bound to speak the truth, and the whole truth, for if you do not, the Court will be obliged to deal with you as with other persons in that situation, and one no further gone than yesterday. Was there a good deal of pressure required to put the body down?—Yes, for putting the lid down

Was there any other person present?—Yes, one of the name of Hare.

By the LORD ADVOCATE—Was the head uppermost?—I could not say, my Lord

What became of the sheet?—It was left where the box went to

Evidence for Prosecution.

John M'Culloch

Is that the box (*witness was shown an old tea-box*)?—Yes, my Lord.

What kind of hair was it, was it a man or a woman's?—My Lord, I do not know

How long was it?—About the length of that (*showing one half of his hand*)

Well, then, was this box roped?—Yes

And you carried it?—Yes, he (Burke) ordered me to carry it, and I am a porter

Did he tell you where to go to?—I was to go down the Cowgate, up the High School Wynd, and he was to be immediately after me

Did he meet you there?—He told me to go to the head of the Wynd, and he would meet me there

Did he meet you there?—Yes

Was there anybody with him?—Yes, his wife.

Where did they join you? They did not join you in the High School Wynd, it was farther on, was it?—Yes

Was there anybody else there?—Hare was there.

His wife, was she there?—Yes, she is a big woman, she was there.

Then there were two women and two men there?—Yes, sir.

Now, you went up the Wynd Were they before you, or did they overtake you?—They overtook me

Before you got into Surgeons' Square?—Yes; all the *four*

By Mr. ALISON—Then you went into a house there?—Yes; and we went to the gate, and having put the burden off my back, I left it there.

About what hour was this?—About half-past six, my Lord

This box and the body was taken into the house, and you left it there?—Yes.

Where did you go to?—To Newington. Burke ordered me to go along with him

Who went to Newington with you?—Hare, Burke, and the two wives

Now, when you went to Newington, did the wives keep along with you, or did they separate from you?—They separated, and I stood alone

Did the men go into any house, or did anybody come to them?—A young gentleman

David Paterson, you saw him here to-day?—Yes, sir.

You went into a house, did you get a dram?—Yes

Did Burke and Hare come in?—I do not think that Hare went in

What took place in the public-house?—This young lad gave them money

Did you see money?—I saw him give them money.

And they divided it?—He gave them what was theirs, and nothing more.

You got paid for your trouble?—Yes.

How much did they give you?—Five shillings

When you came in there, where were the women? Were they left by the men there?—No

They had gone away before?—Yes

By the LORD JUSTICE-CLERK—Are you quite positive, M'Culloch, that you saw this woman M'Dougal at Newington?—Yes, my Lord

And also Mrs Hare?—Yes, my Lord.

Burke and Hare.

John Fisher

14. JOHN FISHER, *examined by* Mr. ALISON—You remember a person coming to you in November, of the name of Gray?—Yes, about seven. He was in before I came into the office.

Where did you go with him?—To the West Port.

What house did you go to there?—I went to the house of William Burke, the prisoner.

What did you go there for, what was your object?—From the statement of the person that came there, to inquire for anything to establish what had been said.

Was it to search for the body?—No, I understood that the body was removed before I went there. It was to see if I saw anything suspicious.

What did you find?—I found Burke and his wife coming out from the sunk flat, and they were coming upstairs.

Was there anybody with you?—Finlay and Gray. I desued the men to go back and speak with me downstairs, and they went down.

After you went into the house, what took place?—I asked Burke what had become of his lodgers, and he said, that there was one of them, pointing to Gray, and that he had turned out him and his wife for their bad conduct.

What took place then?—I then asked them what had become of the little woman that had been there on the Friday, the day before, and he said, that she was away, and I asked, when did she leave the house, and he said, about seven o'clock in the morning.

Did he say anything about any other person being present when she went away?—He said William Hare saw her go away. Then I asked, was there any other person saw her go away, and he said, in an insolent tone of voice, there were a number more. I then looked round the house to see if I could see any marks on the bed, and I saw the marks of blood on a number of things there; and I asked Mrs. Burke, the pannel at the bar, how they came there, and she said, that a woman had lain in there, about a fortnight before that time, and the bed had not been washed since.

Well, what more?—She said, as to the woman, she could find her, she knew her perfectly well, and that she lived in the Pleasance. She alluded to the little woman, that I had asked where she was, and she said, the woman can be found, she lives in the Pleasance, and she said she had seen her that night in the Vennel, and that she had apologised to her for her bad conduct the night previous. I asked her then, what time the woman had left the house, and she said, seven o'clock at night. When I found them to vary, I thought the best way was, to take them to the Police-Office, and I told them that it was all personal spite, but that I must take them to the office, as I was sent down.

But, before going to the office, did you put any questions to Burke, or this other woman, (the pannel), how this woman came to the house?—No, I put no questions to them on that subject.

Then, you went to the Police-Office, and took them with you?—Yes.

Had you any further conversation with them there?—I heard them examined by the Superintendent. He examined them.

Did you hear any conversation between the Superintendent and Burke?

LORD JUSTICE-CLERK—Keep to *that*.

Evidence for Prosecution.

John Fisher

The WITNESS—I told the Superintendent that I had seen some marks of blood there.

By Mr ALISON—Well, did you return to Burke's house that night?—Yes, the Superintendent, Dr Black, and I, went to Burke's house

Did you examine the house then?—Yes.

Did you find any article of wearing apparel there?—Yes, at that time Mrs Law came into the house, and we found a striped bed-gown on the bed, and we took this striped bed-gown away

Did you find anything else?—No

And you took it away?—Yes.

Look at it, (*a striped bed-gown was handed to the witness*), is that it?—Yes

Did you find any blood?—There was a quantity of blood amongst the straw under the bed

Did it appear to have recently come there?—Yes, it appeared quite fresh.

Now, next morning, did you go to Dr Knox's premises in Surgeons' Square?—Yes

Was there a person of the name of Paterson with you?—Yes

Did you get anything?—Yes, we went down to the cellar, and he said "Here is the box, I do not know what is in it", and we opened it, and found the body of a woman in it

By the LORD JUSTICE-CLERK—Quite naked?—Quite naked

By Mr ALISON—Was there any person sent for to come and see the body?—Mr Paterson and I remained, and we sent for Giny to come and see if that was the body

Did he recognize it in your presence immediately?—Yes We directed it to be put in, and I took the precaution to put a man on the door before I went away

Did you return again?—Yes

And removed the body to the Police-Office?—Yes, the same day

By the LORD JUSTICE-CLERK—I suppose when you went there, Paterson looked at it, laid it out on the table, and examined it?—Yes, in the cellar, in the lower flat of the house

By Mr WOOD—Was the body shown to Miss Connaway?—Yes

By the LORD ADVOCATE—Was there no other body but one in the Police-Office?—No other.

Was the body shown to the prisoners?—Yes.

What took place then?—They all denied it.

Denied what?—Denied all knowledge of the body

By the LORD JUSTICE-CLERK—Of ever having seen it at all?—Of ever having seen it, dead or alive

By Mr WOOD—Did you, after that, return to Burke's house?—Yes

What did you find there?—Part of a gown, and this bag or pillow case (*pointing to Campbell's clothes*)

What else took place?—The body was examined by Dr. Black, Dr. Christison, and Dr Nowlugging.

Cross-examined by the DEAN OF FACULTY—Did Hare deny all knowledge of it?—Yes; he said he never saw it, dead or alive

Cross-examined by Mr COCKBURN—His wife, the same, I suppose?—Yes.

Burke and Hare.

William Hare

15 WILLIAM HARE, *Sworn in the usual manner* by LORD MEADOWBANK.

LORD MEADOWBANK—Now, we observe that you are at present a prisoner in the Tolbooth of Edinburgh, and from what we know, the Court understands that you must have had some concern in the transaction now under investigation. It is, therefore, my duty to inform you, that whatever share you might have had in that transaction, if you now speak the truth, you can never afterwards be questioned in a Court of justice, but you are required, by the solemn oath you have now taken, to speak the truth, the whole truth, and nothing but the truth, and if you deviate from the truth, or prevaricate in the slightest degree, you may be quite assured that it will not pass without detection, and that the inevitable result will be, the most condign punishment that can be inflicted. You will now answer the questions that are to be put to you.

LORD JUSTICE-CLERK—You will understand that you are called here as a witness regarding the death of an elderly woman, of the name of Campbell, or M'Gonegal. You understand that it is only with regard to her that you are now to speak.

To this question the witness replied, by asking, "T'ould woman, sir?"

LORD JUSTICE-CLERK—Yes.

Examined by the LORD ADVOCATE—You are a native of Ireland, Hare?
—Yes.

How long have you been in this country?—Ten years.

By the LORD JUSTICE-CLERK—Are you a Roman Catholic?—Yes.

Do you wish to be sworn in any other way, than that now administered by my brother?—I never was sworn before, sir, and I am no judge of that.

(The New Testament was handed to the witness, with a representation of the Cross upon it)

LORD MEADOWBANK—Now, you will observe that there is a representation of the Cross on the book of the New Testament; lay your right hand upon the Cross, and repeat the words of the oath again, after me.

(The witness was sworn in this manner)

Examination continued—How long have you been acquainted with William Burke?—About a twelvemonth.

You have been ten years in Scotland, and you have been a resident in Edinburgh?—Yes.

You are a married man, and your wife is here?—Yes.

When did you become acquainted with the prisoner Burke?—About a twelvemonth ago.

And you became acquainted with the other prisoner M'Dougal about the same period?—Yes.

She lived with him then, and since?—Yes.

Your house is near his?—On the same side of the street.

Were you in a public-house on the 31st of October last, kept by a person of the name of Rymer?—Yes.

Were you and Burke drinking together on that day?—Yes.

How much did you drink?—A gill.

Was anybody with you?—No.

Did he tell you about any person being in the house?—Yes.

About what o'clock was it?—I could not say; it was in the fore part of



Hare's House in Tanner's Close.

From a Drawing made at the time of its demolition in 1909

Evidence for Prosecution.

William Hare

the day He took me to this house, and he told me to go down to his house, and said that there was an *ould* woman in the house that he was going to murder, and for me to see what they were doing, that he had left some whisky in the house, that he got the woman off the street, and that he thought she would be a good *shot* to take to the doctors

By the LORD JUSTICE-CLERK—Did not you, sir, in the early part of this statement say, that he had got a *shot*, and that he was going to murder her for the doctors?—He said to me to go down to the house, and to see the *shot* that he had, and see what they were doing in the house

By the LORD ADVOCATE—Did he use the word murder; or did you understand it from the *shot* for the doctors?—To see what they were doing

Did he use the word murder?—No

What did you understand by the word *shot* for the doctors, did you understand the meaning of it?—Yes

What was it?—That he was going to murder her

Well, did you go down?—Yes, sir, I went down

Alone?—Yes

You went to Burke's house?—Yes, I went to his house

Who did you find there?—A strange man and woman in the house; Nelly M'Dougal, and the old woman,—and she was washing her gown.

Do you know what the name of that strange man and woman is now?—I could not say the name

Is Gray the name, do you think?—Yes, Gray

And the woman was washing some linen things?—She was washing her short gown.

Was it the old woman that was washing?—Yes, she was washing her short gown

What colour was it?—White and reddish colour,—striped

Was it like that there? (*the gown was handed to the witness*)—Yes, that is it.

Did you remain long there?—About five minutes.

And then went away home?—Went home.

Were you in Mrs. Connaway's after that?—No, I was not in there till after night.

You know that woman?—Yes.

Were you in her house that night at all?—Yes, between eight and nine o'clock.

Then you came back from that to your own house?—Yes.

Now, who was in Connaway's when you was there?—John Connaway and his wife; and there was William Burke, John Brogan, and another *chap*—I don't know his name

Did William Burke remain with you?—He went away with the two chaps, Brogan and the one I don't know

Who else were there?—That old wife, and Nelly M'Dougal, and my wife

Had you some drink when you was there?—Yes.

Did you remain there till pretty late?—We remained there till between eleven and twelve o'clock I could not say just directly

Burke and Hare.

William Hare

Where did you go to?—Nelly M'Dougal asked me and my wife to take a dram in her house

And you left the old woman there?—Yes, we left the old woman sitting at the fire, and John Connoway

Well, when you were in Mrs. Burke's house, did Burke come in?—Yes, and the old wife with him

Had you any more drinking?—Yes, there was a *soup* of whisky in the bottle, and we all drank it out We were all pretty hearty

Was the old woman that way too?—Yes.

When you were in Connoway's, were you dancing and singing?—Yes.

Did not she hurt her feet in Connoway's?—I did not see

At this time, did you expect that any mischief was to happen to this old woman?—Not that night

Now, after this, had you any quarrelling or fighting with Burke?—He asked me what I was doing there, in his house I told him that Nelly M'Dougal asked me in to get a dram, and he struck me then

Did you strike again?—Yes, I did

Had you a fight?—Yes

Now, where were the women during this?—They were *redding* us

They came in betwixt you to separate you?—Yes, he pushed me down twice on the bed, and the last time I lay on the bed

How long did you lie there?—I could not say

By the LORD JUSTICE-CLERK—You were twice down on the bed?—Yes

By the LORD ADVOCATE—Now, when you were fighting, where was this old person?—She was sitting at the fire, and she got up and desired Burke to sit down, and she said that she did not want to see Burke abused

Did she run out?—Yes, she ran out twice to the entry, and cried out for the police

She went out twice to the passage?—Yes

What did she call out?—It was either murder or police, I could not say which, but it was some of them

Well, how was she brought back again?—It was Nelly M'Dougal that fetched her back

Both times?—Yes

Did she then get any push, or fall over on the ground?—Yes, she did, when we were struggling, I pushed her over a little stool

And you continued to struggle while she lay there?—Yes, she raised herself on her elbow,—she was not able to rise, being drunk,—and called on Burke to be quiet

By the LORD JUSTICE-CLERK—You mean quiet from fighting with you, or you with him?—Yes

By the LORD ADVOCATE—Did he quit you at last?—After he threw me the second time on the bed, he then quit, and I lay still in the bed

What did he do?—He stood on the floor; he then got stride-legs on the top of the woman on the floor, and she cried out a little, and he kept in her breath

Did he lay himself down upon her?—Yes, he pressed down her head with his breast.

She gave a kind of cry, did she?—Yes.

Evidence for Prosecution.

William Hare

Did she give that more than once?—She moaned a little after the first cry

How did he apply his hand towards her?—He put one hand under the nose, and the other under her chin, under her mouth

He stopped her breath, do you mean?—Yes

Did he continue this for any length of time?—I could not exactly say the time, ten or fifteen minutes

Did he say anything to you when this was going on?—No, he said nothing

Did he then come off her?—Yes, he got up off her.

Did she appear dead then?—Yes, she appeared dead *a wee*

Did she appear to be quite dead?—She was not moving; I could not say whether she was dead or not

What did he do then?—He put his hand across her mouth

Did he keep it there for any length of time?—He kept it two or three minutes

Did she appear to be quite dead at that time?—She was not moving

What was you doing all this time?—I was sitting on the chair

What did he do with the body?—He stripped it of the clothes

Where did he put them?—Under the bed.

What did he do with the body?—He took it and threw it at the foot of the bed, doubled her up, and threw a sheet over her, he tied her head to her feet. He tied her head and feet together, and covered her up with straw.

Now, during the time this man was lying on her, where was M'Dougal and your wife?—When they heard the first screech, they left the foot of the bed and went into the passage.

Did they both run to the passage?—Yes

Did they come in again when this was going on?—They did not come in till this was all over, and her covered over with straw

You said they were lying in bed before this time too?—They were lying in bed with the rug over them.

Did they cover their faces with the rug?—I did not see

Where were you sitting at this time?—At the head of the bed.

Did you see the blood?—I did not observe any at that time

No blood on the floor?—Not any at that time

Any blood on the woman's face?—I did not see any at that time.

Did you hear these women cry anything after they went into the passage?—I did not take heed.

Nobody came in at that time?—None

Before the women sprung up, had you seen Burke turn the woman round, or do anything at all to her?—He was on the top of her when they sprung out of the bed.

Was he long in that position before they went away?—A minute or two; whenever he caught her, she gave a screech, and they ran away

None of them laid hold of Burke, and tried to screen the woman?—None at all.

Which of them went out first, do you remember?—It was my wife

Burke and Hare.

William Hare

Did the other follow immediately?—It was not long till she went out after

Neither of them made any attempt to save this woman, or to take Burke off her?—Not that I saw

Could it have been without your seeing them?—No, it could not

Well, how long before this was it that these women, as you describe lying in the bed, had been separating you and Burke?—About ten minutes before this

Then, you saw them come in again?—Yes, they came in again

Well, did Burke go out then?—Yes, Burke went out

Immediately after this old woman was laid in the straw?—Yes; he immediately went out

Was he long absent?—About ten minutes

When the women came back, did they say anything? Did they ask no questions?—No.

Did you say anything?—No

What did you do then?—They went to their beds again

Did neither of them ask for the woman Docherty when they came back?—They did not

Then you saw Burke went out, and returned in about ten minutes Did anybody come back with him?—Mr Jones

Was it not Mr Paterson?—It was the doctor's man (*The Macer called Mr. Paterson in Court, but he failed to appear*)

Do you know where this man lived?—He lives down on the other side of the street, in the West Port

Well, when he came back with Burke, what did Burke say to him?—He asked him to look at the body he had got; he said it would do well enough, to get a box and put it into.

Did Burke point to the straw where it was?—Yes; and he wanted him to look at it, but he would not look at it.

Were the women present then?—They were in the bed

Were they awake?—I could not say

How long before that did you speak to them?—None of them (the men) spoke to them, he, (Paterson), went out to the passage

When they were in their bed they did not speak at all?—No

None of them said anything when Mr. Paterson was present?—No, I do not know

Did you fall asleep before he went away?—Yes

You were tipsy, were you, were you quite drunk at that time, or did you know what you was about?—Oh, yes, I knew well enough what I was about, though I was *drunkish-ways*.

And you fell asleep, did you?—Yes.

Did you know what time you awoke?—Between six and seven in the morning

Where did you fall asleep, where were you lying when you fell asleep?—In the chair

Were you in the chair when you awoke?—I was, with my head on the side of the bed, in the chair.

Evidence for Prosecution.

William Hare

Who was in the bed when you awoke?—There were two women, and John Brogan, who was lying behind them, next his aunt

Who is his aunt?—Nelly M'Dougal, he calls her his aunt.

Where was you lying?—At the fireside.

Well, after this, when you got up, did you and your wife go home?—Yes

Who did you find at home?—John Gray and his wife

Had they slept in your house?—They had fallen out with Burke that evening, and they applied to my wife for a bed

You cannot say which of them applied?—I cannot say which

Did Burke ask no bed for them, or speak to you about a bed for them, the day before?—I could not say.

Did he speak to your wife in your presence?—I could not say, I did not hear him

Did M'Dougal speak of a bed?—I could not say

There they were,—well, did Burke come back to you next morning?—

He came to Rymer's shop I was going to feed the swine, and he called me into Rymer's shop, and he asked me if I had got my morning, he called me to get a gill, and he asked me would I go with him to Surgeons' Square to see about a box, and I told him I did not heed after I fed the swine

Well, did you go to Surgeons' Square?—Yes, he inquired about a box there

Where did you wait?—I was in the room with him.

And you did not get a box there?—No

What did you do then?—He said that he had one bespoke or bought, I do not know which, from Mr Rymer's shop-boy

Well, tell us what happened afterwards. Was the box got?—Yes, he bought a box from him.

Did you see it?—Yes, but not at that time

Did you see it brought into the house?—Yes.

Who was it that brought it?—It was the porter who brought it into the passage, and both him and I went into Burke's house with it

Was Burke there at that time?—No.

Did he come in?—He did not come in till about a quarter of an hour.

Who was with him?—A man, I do not recollect his name; he stands at the head of the Cowgate. There was no person in the house when he went in, and we left the box there and came out again; we went out at the back door, and waited till Burke came.

Well, then, when he came, did you all go into the house again?—He asked of me what was I doing, and said, "You are little worth that did not put it into the box"; and with that he went into the house, and when in the house, he went and pulled it out on the floor, and I helped the body into the box.

Was there an old sheet there?—Yes

Did it require pressure to put it into the box?—I could not say; it was the porter that stuffed it down, in the latter end. It took some strong presses down; he said that it was a bad thing to keep the hair on the outside; and he took it and pressed it down in the inside

Well, was it roped, this box?—Yes, it was.

Burke and Hare.

William Hare

Look and see if this is the box here? (*The old tea-box was shown to the witness*)—I cannot say whether that is the box or not.

Was it of that kind?—It was of the same shape.

Was it roped?—Yes

What was done with it?—The porter took it away with him

Did he get any directions where to carry it to?—To Surgeons' Square

Did he and you go to Surgeons' Square at the same time?—Yes

Did you overtake, or meet the porter there?—I went with the porter, and Burke went for the doctor's man

And you all met in Surgeons' Square?—Yes

Were the women there?—They were not in the Square, but were following us

The women were, M'Dougal and your wife;—you saw them in Surgeons' Square?—No, they were not in Surgeons' Square, they were in the street

That is, in the street in the High School Yards there—Yes.

Did he and you go to Surgeons' Square at the same time?—Yes

Did you both go together into Surgeons' Square, or did Burke come in first?—Burke was last in coming in, we went in with the box, I could not say whether it was the porter or not that went in with the box first

And you assisted them, did you?—Yes

And you all three went in, and the box was put down into the cellar?—Yes

Where did you go to?—To the doctor's house

Where is that?—At Newington

Well, did you go into the house, or did you wait till the doctor's man came out again?—No, we waited till he came out

Had the doctor's man, Mr. Paterson, and you been talking of any allowance?—Yes; he went in, and came out and told us to go down to a public-house at the foot of the Cowgate, and he would give us some money

What became of the women, did you see them at Newington at all?—We saw them on the road

To Newington, you mean?—Yes

Going or coming?—Both in going and coming

They did not join you,—they did not come into the house?—No.

Did you get money there?—Yes, the man had five pounds

And that was divided betwixt you?—Yes, he gave the porter five shillings, and then he gave William Burke two pound seven shillings and sixpence, and me two pounds seven shillings and sixpence

Was this the whole price, did you understand you was to get more?—We were to get other five pounds by Monday

Was that to be demanded on the doctor's seeing the body?—He did not say

Well, then you went home,—did you hear any more of the matter till you was apprehended?—Yes, I saw him, (Burke), apprehended that night.

When was you apprehended?—Next morning, Sabbath morning.

Cross-examined by Mr COCKBURN—Mr. Hare, how long do you say you have been in Edinburgh?—About ten years

What have you been employed at during all that time?—Boatman and labourer.

Evidence for Prosecution.

William Hare

You have not been boatman all that time?—Yes.

Where?—On the Canal.

Have you been employed in any other way?—I had a horse and cart selling fish

Any other way?—No

Have you been engaged in supplying bodies to the doctors?—Yes

Have you been concerned in supplying the doctors with subjects upon other occasions than that you have mentioned?—No,—than what I have mentioned

LORD ADVOCATE—I object to this course of examination.

Mr COCKBURN—I request the witness to be withdrawn. (*Witness was withdrawn*) My Lords, I asked the witness, whether part of his occupation during the time he has been here, was in supplying medical lecturers with subjects, and he said that he had been so employed. Now, the question that I wish to ask him is, Whether that was his trade and living, *on other occasions*? And this, as I understand, is objected to. But I would not be doing justice to the pannels or the Court, if I did not insist on putting that question. And I may avow, that it is only introductory, and as it may facilitate the consideration of the point, I may as well explain at once, that I hold myself entitled to ask this man to reveal his whole life and conversation. In particular, I mean to ask him this specific question,—Have you ever been concerned in murders beside this one? I am ready to admit that he is not bound to answer, but I am entitled to put that question, let him answer it or not as he pleases. It will be for the jury to judge of the credit due to him, after seeing how he treats it.

LORD ADVOCATE—The caution that was put to this witness was, that he was not to speak to any of those cases, except the one under investigation; and how he can be asked with regard to them now, in this state of the proceedings, to me is inconceivable.

LORD JUSTICE-CLERK—I do not think that the general question, if he ever supplied the doctors with subjects, ought to be put, at least, I am bound to tell the witness that he need not answer it unless he pleases.

LORD MEADOWBANK—When we are gravely and imperatively called upon to tell the witness so, for what purpose is it that that question can be put, when the witness is told that he is not bound to answer it, I cannot discover; but, further, I have to state this, that the witness is brought here to be examined on the matter before the Court, and he cannot, in any circumstance that may be disclosed in that evidence, be examined on a cross-examination, he cannot be called on to answer other matters. And is he to be exposed to suppositions because he does not choose to answer that question? It would be subversive of every principle of justice, because the Court cannot protect him. Upon that ground, I submit therefore, that it is not a fit and proper thing to allow such a question to be put, when he is not called upon to answer it, and when your Lordships' power would not protect him if he did answer it. I hold it to be the duty of the Court not to allow that question to be put.

Mr. COCKBURN—Your Lordship will observe that I have only stated what the proposed question is, but that I have not been heard in support of it. Indeed, I could not have been heard upon it, because it has not yet been

Burke and Hare.

Mr Cockburn

objected to by the prosecutor. Nevertheless one of your Lordships has not only formed, but has expressed an opinion, and a very clear opinion, against it. The best way of considering this point is to view it in relation to the *general scope and avowed object* of the proposed examination, rather than as limited merely to this detached question. Our object is to test the credit due to this witness, and therefore, I propose to make him disclose himself, by asking him about his accession to all sorts of crimes of which we may believe that he is conscious of being guilty. Now, I maintain my right to do so on as firm grounds as ever man maintained any proposition. Testimony is never admitted except on the ground that credit is probably due to it. Every objection to competency is merely a guard set to watch the avenues of credibility. And even where the testimony is admitted, the objection to its admissibility is often relaxed, merely because, after it is let in, it is still the right and the duty of the jury to judge of the weight it is to receive. But this check is altogether defeated, where a witness is allowed to give his testimony, and is at the same time permitted to conceal circumstances *within his own knowledge*, which may enable it to be appreciated. It is true that he may be privileged not to answer, but this is no objection to the competency of putting the question, because, in the *first* place, he may *choose* to answer,—and, in the *second* place, which is the common way with an unworthy witness, he may answer, and answer *falsely*, and thus afford the means of getting himself contradicted. This is so plain, that the idea of protecting a villainous witness, by not letting any question about his own iniquities be even put to him, humbly appears to us to be absolutely monstrous, and I know no authority for it in the law of Scotland. We have no authority indeed, except that of common sense and general principle, either one way or another. But I understand that in England, where they are richer than we are in cases on this subject, and more experienced in the application of the rules of evidence, there could be no discussion on this matter. Indeed, I see a trial reported the other day, where certain persons were accused of a conspiracy, and where the prosecution rested chiefly on the evidence of a person supposed to be of bad character, and I see him expressly asked, “Are you a common prize-fighter? Are you the keeper of a gambling-table?” &c. And not confining themselves to these general questions, they ask him specially the very question that I now propose to put. “Did you ever kill a man?” He answered that he had, and so they go on making him confess, or deny, or evade, the commission of all sorts of iniquities, and the result was, that the judge—either Justice Builey or Justice Vaughan—tells the jury to acquit, because the principal witness *had proved himself* to be undeserving of much credit. The propriety of this, if it be true that parole testimony is received, because it is justly entitled to belief,—seems to me to be so perfectly evident, that I really cannot argue the question. I cannot fancy anything more dreadful, than that a witness is to be allowed to give his evidence, and yet is to be protected to this extent, that he is not to be permitted, even if he chooses, to disclose iniquities, in which he may be absolutely steeped; which, were they proved, would deprive his testimony of every claim to credit. We are so confident in our opinion of the legality of the question,

Evidence for Prosecution.

Mr ALISON

that we wish it to be put on the record, in order, that if it be rejected, we may find our remedy where we can

Mr ALISON—Whether he is to dispute inquiring into the examination of a witness in this way or not, I apprehend there is no point upon which the law of Scotland and England is more at variance than in the cross-examination, or adducing of the evidence against the witnesses, by which they are to be discredited. We all know, in the law of England, where a pannel has not a list of witnesses served upon him, they are entitled to examine them as to their whole life and conduct, but that is not the case here, not merely on the ground that a witness is entitled to protection from the Court, but that a person is not liable to answer on cross-examination for his whole life and conversation. Hume says, vol ii, page 341—“Moreover, the pannel shall not much mend his objection, though he drop these general imputations of evil fame, and offer an immediate proof, by testimony, of infamous crimes committed by the witness. The prosecutor must not lose his evidence, but on sure and satisfactory grounds; and the witness is not to be *made* infamous in this trial, on a summary, unexpected, and *ex parte* inquiry—he must be shown to be already infamous, by his conviction in due course of law, of some crime inferring infamy, after a fair and an open trial. This has been the settled rule of our practice, if not from the earliest times, at least ever since the introduction of a new and more improved order, with the new establishment in 1671”—See also Burnett, p 462, who says—“A witness is exempted from giving evidence as to facts which may infer his own infamy,—the rule being, that no one is to be rendered infamous or *disgraced* by his own testimony, though it may collaterally aid the pannel by affecting the competency of the witness. What the law will not allow to be proved by others, it will not permit to be *proved* by the witness himself, especially when, with regard to circumstances that can alone incapacitate or *discredit* him, the law has pointed out the mode, and has at the same time afforded the opportunity, by the previous notice it requires to be given of the witnesses to be adduced of substantiating these in a better way, viz, by producing a *record* of the conviction of the witness”

A witness in England may be interrogated upon any facts tending to discredit or infer suspicion, but with us it only is in the due course of law, after a fair and open trial, with the production of a conviction of some offence by a jury, that will disqualify, but without any conviction being put upon record, it is quite contrary to the law of Scotland, therefore the investigation that is proposed finds no analogy in the law of England

DEAN OF FACULTY—My Lord Justice-Clerk, I entirely concur with my friend in the earnestness with which we urge the right to put this question to the witness, and propose to enter it upon the record. It will be observed, that the question is put to the witness himself, not with any view of *disqualifying* him as a witness, but solely for the purpose of affecting or trying his *credit*. we are not proposing to bring any other witnesses or proof on the subject of the question, which is the case supposed by Mr Hume, or bring forward anything in order to disqualify him as a witness; but we wish to put a question which is plainly calculated to try the credit of the witness. Your Lordship indeed warned him that he was not to be

Burke and Hare.

Dean of Faculty

examined upon any other but the present case, that he was not to be examined upon any other charge *against the pannel* but that regarding the death of Margery Campbell or Docherty, and assuredly the prisoner cannot be affected by anything he may say as to any other offence. But this will never lead to the consequence, that the prisoner is not entitled to examine the witness as to his own conduct, so as to show the jury what reliance may be placed on his veracity and regard for his oath. Your Lordships also solemnly warned him of the obligation to speak the truth, and the danger to him specially of any departure from it. You did this from the knowledge that he is not in the ordinary circumstances of a witness, but liable to the greatest suspicion. And surely when such a witness is brought against a prisoner, it is but reasonable and plainly necessary to the ends of justice, that he should have full liberty to show the character and credit of the witness, if he can do so by that person's own testimony. We are quite aware that the question is one which the witness may decline to answer—we never meant to say anything to the contrary—but it happens often, with such witnesses, that even though warned of their privilege to decline answering, they choose to answer questions of this kind, and answer them *falsely*, and in the present case, we think it very probable, that this witness will answer the question, and that he will answer it *falsely*. But, in whatever way he may answer it, it involves matter of the highest moment to enable the jury to estimate his credit. If he answers it affirmatively (which we believe he must if he speaks *truly*), the fact will speak for itself. If he answers in the *negative*, it will be *false* evidence upon his oath, and the law affords remedies independent of the effect in this trial. If he declines to answer the question, we are aware that we can only leave it to the jury to draw their own inference.

LORD JUSTICE-CLERK—You have heard the objection to the competency of this question, we all know the course the Court follows in such a case, which is, to tell the witness not to answer the question unless he thinks proper.

LORD MEADOWBANK—I regret having stated the impression made upon my mind by the bare announcement of the question proposed to be put to the witness, because I should most assuredly, in a matter of this vast importance, have rather desired to obtain every light that could have been thrown upon it before I ventured to deliver my judgment regarding it. But perhaps my having done so, was only the effect of my attention being more anxiously called to every word that dropped from my brethren at the bar; and if I had been satisfied that anything that was suggested by them ought to have had the effect of shaking the opinion which occurred to me at first, nothing that I stated before could (I trust it is unnecessary for me to assure your Lordships) have prevented my honestly and frankly avowing it. I have, however, been confirmed in that opinion, by finding, that notwithstanding all the ingenuity of my learned brethren, they have said so little on the subject, and that they have been unable to show one single precedent in favour of their argument, except that which has been obtained from the law of England. Now, I for one must throw the law of England altogether out of the question. It is, I believe, in matters of this kind, diametrically opposite to ours. That law, for instance, holds, I believe,

Evidence for Prosecution.

Lord Meadowbank

that a witness has no protection from having been examined on a criminal trial. We hold that he has. It is quite absurd, therefore, to dream of drawing a precedent, which is to guide your Lordships, from the law of England. But even our law goes no farther than to protect witnesses from being subject to prosecution on account of matter immediately and inevitably connected with the subject of the trial in the course of which they are examined. I understand it, therefore, to be admitted that, if the question proposed were entertained by your Lordships, the witness must be told that he is not bound to answer it, because it is beyond the competency of this Court to afford him protection against being afterwards questioned for the perpetration of crimes which do not form the proper subject of inquiry in the present investigation.

But I have always understood that the law of Scotland has always gone a great deal farther—that it allows no question to be put which a witness may not competently answer, and which, if answered, must not be sent to the jury as a matter of evidence.

Now, in the first place, I admit that it is quite competent for the prisoner to put any questions, provided they be directly relative to the matters at issue, by which he apprehends that the credibility of the witnesses for the Crown may, if answered, by possibility be shaken. There, however, I apprehend the right to stop. The oath taken by the witness binds him to speak the truth, and the whole truth; but that obligation goes no farther than it refers to the matter before the Court. It neither does, nor has it ever been held, to bind him to speak to matters relative to which he has not been called legally to give evidence. I apprehend, therefore, that even the oath which has been imposed upon the witness, is not obligatory upon him to speak to matters *not immediately* connected with the subject of this trial—and, in fact, such was the opinion of the counsel for the prisoners, for, upon their application, the witness was particularly warned that he was only required to speak the truth, and the whole truth, relative to the third charge in this indictment. I have always understood, however, that no question could be put, upon cross-examination, to a witness in this country, which would, if answered, have the effect of rendering him in truth inadmissible; or what is in effect the same thing, a witness whose evidence could not even be sent to the jury for their consideration. All questions having that effect, must be put as preliminary, and at that period when the questions asked of all witnesses by your Lordships before the examination commences. In that respect, very likely, we differ from the law of England; but for the reasons assigned by Mr Hume in the passage read by Mr Alison, I am not inclined to think that the rules of our law are here inferior, or less effectual for the administration of justice. The object of our law has always been to get at the truth, and I suspect that is best to be obtained by preventing witnesses being harassed in the way that would result from such questions as the present being held to be admissible.

But further still, suppose, in the second place, that the witness answers the question that has been put, and in the affirmative, and deposes that he has been present at more murders than the one in question, what is to be the result? Is the Lord Advocate, upon the re-examination, to ask him at what murders he has been present, and who was concerned in those

Burke and Hare.

Lord Meadowbank

murders or to go into an examination of all the matters connected with those cases? If he is, we may be involved in an inquiry into the circumstances connected with the other murders in this indictment, which are not now the subject of this trial, and which your Lordships, by your interlocutor, have precluded from being the subject of trial at present, and before this jury I cannot think that such can be your Lordships' intention, yet the Court must be prepared either to go this length or not, before allowing a question to be put which must open up such a field of inquiry, for if the prisoner is entitled to put the one question, it must follow that the prosecutor is entitled to put the other, and if you do permit such an inquiry, you must be prepared to send the answers so given, and the evidence so arising, to the jury for their consideration. And what would be the consequence? By the evidence thence arising, and the suspicions thence created, the prisoners might be convicted upon matters not at issue in this indictment. Nor is it enough to say that this has been occasioned by the prisoner himself, for the law of this country interposes to protect a prisoner from his own mistakes—it lays down rules by which, in all cases, protection shall be afforded against either accident or error, and such a rule, I apprehend, we have, by which such a question as the present is rendered inadmissible. In short, I conceive it would be highly erroneous to send such answers to a jury, and as I am clear we are not entitled to permit any questions to be put, the answers to which must not be sent to the jury, I think this question cannot be admitted. But I set out with saying that I do not think any question can be sustained by your Lordships, which, if answered in the affirmative, would disqualify a witness. Now, such questions as this, it appears to me, are of this nature. For thus, suppose that the question put were, Have you committed ten acts of perjury—and the answer were in the affirmative, what is to be the result? Your Lordship must tell the jury either that the witness's answer is true, or that it is false. If true, must it not also be added, that he cannot be believed upon his oath, and that, if it appears not to be true, then he is equally incredible. By admitting such questions, therefore, the necessary result is, that you put it in the power of the witness to disqualify himself; and that, I have invariably understood, I can solemnly assure your Lordships, to have been a principle reprobated by the law of this country.

LORD MACKENZIE—I incline to a different opinion, nor am I surprised that in a case which appears of so unusual a nature, differences of opinion on some points should occur. I agree in the first place, that the witness has no protection beyond the case in which he has been called as a witness. I have no idea, that by confessing, either ultroneously or on his examination or cross-examination, other crimes than those in reference to which he has been brought forward to give evidence by the public prosecutor, he could acquire any right to impunity for those crimes, or even security that his own words might not be used in evidence for his conviction of those crimes. But then, in the second place, it does not appear to me that the want of protection is a sufficient legal ground for refusing to allow a question of this kind to be put to a witness, though I think it is a good reason for his being carefully warned by the Court that he is not bound to answer the question so as to criminate himself, and that if he shall answer it, he has

Evidence for Prosecution.

Lord Mackenzie

no protection I understand that to be the general course of our law when questions are put to a witness that may tend to criminate him. The protection acquired by witnesses called by the public prosecutor puts them in a different situation. But this course applies to witnesses for pannels, and it rather appears applicable even to witnesses for private prosecutors in criminal cases. I do not think therefore that the danger of the witness criminating himself requires the exclusion of the question, provided he is properly warned. But it is said, on the authority of Mr Hume, that a witness ought not summarily to be put upon his trial for his character. I do not dispute that authority, but I think it not applicable to an examination by questions which are put only to the witness himself, and which he may decline to answer. That is quite a different thing from bringing forward other witnesses without notice, to prove guilt against any one witness, and destroy his character, which seems to be what Mr Hume considers objectionable. What is attempted here, seems to be to examine a witness himself respecting his own character, which I have never considered to be generally incompetent. It is argued, that he may in this way disqualify himself, by falsely imputing infamous crimes to himself. He could not, however, make himself an incompetent witness by such imputation, for it requires conviction to create legal infamy to that effect. Nor is it likely that witnesses will run the risk of accusing themselves of crimes without protection, which at any rate they can do falsely, only by perjury, and that of a nature by no means incapable of detection and punishment. I am therefore of opinion that the question may be put when your Lordship has fully warned the witness in regard to his danger, and his right to decline answering.

LORD JUSTICE-CLERK—I have given my opinion. I do not mean to rest my opinion, however, upon the law of England, till it is fixed upon us by the Legislature. We cannot adopt opinions and principles which are totally foreign to the law of Scotland. This question is to try the credit of this witness, who is brought forward as a *socius criminis* in regard to the highest crime known in the law of Scotland. Though I think with my brother on my right hand, that it affects this witness, yet this is an extraordinary case, and in very extraordinary cases we must make allowances for extraordinary questions being put. Now, the point in controversy is, whether or not, under the assurance that this man will receive, that the proposed question is one in which he is in no respect bound to answer, and that he is entitled to give no answer whatever to it, this question may be put to the witness. The principle is clear, that he is not bound to criminate himself, and if he should answer it, he is in no respect under the protection of the Court. With that positive warning, which I shall feel it my duty to give, I really must own, notwithstanding all the attention I have paid to the argument, I do not deem myself warranted to take such a view of this question as my brother on my right hand. I am as confident of this as I can be of anything, that in cases under my own observation in this Court, and on the circuit, similar questions have been put to witnesses, and I have struck in immediately by saying—“*you are not bound to answer them*.” I think in those cases the witnesses have uniformly availed themselves of the warning given, and declined to answer the question, and if

Burke and Hare.

Lord Justice-Clerk

this witness does so avail himself, it cannot affect his credibility, when we told him in the outset to-day, that it was only to this case he was to speak, and to no other, and that nothing he said in this particular case could have any effect against him. He must be warned to the fullest extent. He must be cautioned that he *may* not answer the question, but if he does answer it, to the effect of injuring himself, the consequences will be for consideration in addressing the jury.

LORD ADVOCATE—I do not wish to give a second reply. This witness shall be well warned that he is not bound to speak. “You will speak to the murder of the old woman.” Now, this question is put to him only in order to do away with this man’s credibility. If the question is put, Did you commit that murder? *I must* show the jury that that objection to credibility does not apply to him, if that excludes from this question in the other matter.

MR COCKBURN—What he says as to his connection with this prisoner, or any other that he chooses to select, if he chooses to select these persons as his accomplices, he can do so—we have no objections.

LORD JUSTICE-CLERK—In the first place, my view of this matter is, that he is not bound to answer any question, except as to the murder of this woman, and then, after you have sealed his mouth, ask—What were the other murders? The pannel must deal fairly with the witness, and not mislead by any embarrassment, because, with regard to what has passed in the early part of this proceeding, we must say, “You are not bound to answer this question.”

MR COCKBURN—We are entitled to put this question, and the Lord Advocate may put any other question that he pleases.

LORD MEADOWBANK—Is it to be understood, in consequence of the interrogatories put to the witness, that it is competent to enter into the investigation of every other specified murder?

MR COCKBURN—I mean to say that he can object to the questions. The Lord Advocate may object to those questions on which the pannels are not upon their trial, and any other that I may think proper to put to them.

LORD JUSTICE-CLERK—You do not wish to go into another investigation, do you?

MR COCKBURN—As to going into the other matter, the Lord Advocate may put any question he may think proper, with regard to the murder of the other individuals, which rests upon the testimony of this man. I will put the questions that I think proper, but I will warn him not to answer them, in consequence of what your Lordship has done.

The following interlocutor was then pronounced.

After the examination in chief of this witness had been concluded, upon the cross-examination, the counsel for the pannels proposed to ask the witness, “Whether he had ever been guilty of, or concerned in, any other murder?”

Objected, That by the law of Scotland it is incompetent to attempt to discredit a witness by investigating his previous life or actions, or in any other mode but by an extracted conviction for an offence.

Evidence for Prosecution.

William Hare

The Lords find that the question may be put, but that the witness must be warned by the Court that he is not bound to answer any such question to criminate himself in such matter

(Hare was then recalled)

Cross-examination continued by Mr COCKBURN—Hare, you mentioned when last here, that you were concerned in supplying the medical lecturers with subjects Did you assist in taking the body of the old woman to Surgeons' Square?—Yes

Were you ever concerned in carrying any other body to any surgeon?—I never was concerned about any but the one that I mentioned

Now, were you concerned in furnishing that one?—No, but I saw them doing it

LORD JUSTICE-CLERK—It is now my duty to state to you, in reference to a question in writing, to be put to you, that you are not bound to make any answer to it so as to criminate yourself in regard to the answer of it If you do answer it, and if you criminate yourself, you are not under the protection of the Court If you have been concerned in raising dead bodies, it is illegal, and you are not bound to answer that question.

Mr COCKBURN—Hare, I am going to put a very few questions to you, and you need not answer them unless you please—you are entitled to refuse to answer them Now, Hare, you told me a little ago that you had been concerned in furnishing one subject to the doctors, and you had seen them doing it How often have you seen them doing it? *(here the witness paused a little)* Do you decline answering that question?—Yes.

Now, sir, I am going to ask this question, which you need not answer unless you please: Was this of the old woman, the first murder that you have been concerned in *(another pause)* Do you choose to answer or not to answer?—Not to answer

I am going to ask another question, which you need not answer unless you like Was there murder committed in your house in the last October? *(another pause)* Do you choose to answer that or not?—Not answer that

You mentioned, sir, that Burke came and told you that he had got a shot for the doctors, and that you understood that that meant that he intended to murder that woman or somebody?—That was his meaning.

That you understand was his meaning?—Yes

How did you understand that? Was that a common phrase amongst you?—Amongst him

Not amongst him, but you Had you ever heard that phrase used by Burke before?—Yes

Frequently?—Not often

You understood by that, that he was going to murder somebody?—He said this many a time when he had no thought of murdering.

Then how did you understand that he was going to murder?—He told me

Did he tell you whom he meant to murder?—Yes.

He told you so?—Yes.

Burke and Hare.

William Hare

Now, sir, tell us when it was that he told you that he meant to murder that old woman?—In the fore-part of the day.

On Friday?—Yes, eleven or twelve o'clock, I think

Now, you were dancing after this in Connoway's house?—Yes, and so were all the rest

You were dancing in Connoway's that night?—Yes

Was that old woman there at the time?—Yes

You told us when you were examined last, that you did not expect any mischief that night?—I had no notion of it

And yet you told us that he told you Had you no notion of it at that time when you was in Connoway's?—Yes

When you was in Connoway's, you had no notion that there was to be any mischief in Connoway's?—No

Had you any notion there was to be any mischief that night?—From his words.

Had you any notion that there would be mischief that would happen that night?—I had no notion, but only from his words

Pray, sir, when you was in Connoway's, had you any notion that mischief would happen that night?—Only from his speech

He told you that he was to murder this woman You were dancing in Connoway's that night, did you suspect that mischief would be done that night?—Only from his words

When was it that you anticipated mischief that night?—When he was on the top of her

Was that the first time that you formed a suspicion that he was to do mischief that night?—Yes

Were you perfectly easy in your mind that he was not going to murder her?—At the time that him and I fell out, I had no notion till he fell on her.

Do you remember of your seeing this body in the Police-Office along with Lieutenants Paterson and Fisher?—Yes

Were you asked if you had seen that body before? (*This question was hinted at as objectionable by Lord Meadowbank.*)

Mr. COCKBURN—Every discussion of evidence on legal principle ought to be avoided, if possible I was going to propose to put a question, and we shall hear whether it is objected to Let the witness withdraw (*The witness was removed*) If it is objected to, the right way is to get quit of it. I propose to put this question—I dare say I need not tell your Lordship we refer to Fisher of the Police-Office, who said that Hare and his wife denied that they ever saw it The question is, Had he admitted that he ever denied having seen that body?

LORD JUSTICE-CLERK—It is a fair question (*The witness was again brought into Court*)

By Mr COCKBURN—Hare, you saw this old woman's dead body in the Police-Office?—I saw a body in it I could not say whether it was it or not

Was it the old woman's body or not?—I could not say

Do you recollect of saying about five minutes ago it *was* the old woman's body?—The voice of the folk said that it was

Evidence for Prosecution.

William Hare

Now, did you admit that you knew that body or not?—I denied it

Did you admit having seen that body alive or dead, or did you deny it?—I could not say whether or not

How soon was it after her death that you saw her in the Police-Office; was it on the Saturday, Sunday, or Monday, or when?—On the Sabbath-day that I saw the body in the Police-Office

Do you recollect whether you was asked if you had seen that body or not, or if you knew who it was?—I am sure I could not say

Do you recollect of denying you knew anything about that body?—Yes, I recollect that

You have been acquainted with Burke for some time, I understand?—Yes

You are not bound to answer this question I am going to put, unless you like Had you had several transactions with Dr Knox or his assistants and Burke? Do you choose to answer that?—No

Had you received money at various times from Dr Knox?—I never did

Had you received any money from gentlemen representing themselves as Dr Knox's assistants?—They never gave it to me

Did you ever receive any money from Dr. Knox's assistants?—Burke might have had it paid to him by Dr Knox, and he could have given it to me

I ask you, Did you never receive money from Dr Knox's assistants?—No

Who was it that received the money for this old woman's body at Newington?—Burke

How much?—Five pounds

And you were to get other £5 on Monday? Did you not say that there was to be £5 paid to Burke at some other time? Was it £5?—Yes

Are you positive that it was to be paid? Was it £3 or £8? Or do you know anything about it?—Yes.

Who said that?—Dr Knox's man

What was it that he paid to him, do you know?—It was £5 he gave to William Burke, £4 in notes and £1 in silver

That was all that he gave, was it?—Yes

Which of them paid the porter M'Culloch, was it Dr Knox's assistant?—It was Burke

Are you positive?—They were all three sitting on the other side of the table, the doctor's man, Burke, and the porter

Who paid him?—I could not say

You told us some time ago that you were positive Was there £4 paid in notes and £1 in silver?—Yes, and it was Burke that paid me; he threw two notes across the table, and the rest of it was change

Now, sir, attend to this You say Burke was paid all the £5, that Burke afterwards gave you part of it? Are you certain that Paterson did not divide it between you?—He laid it down on the table, Burke lifted up his half, and he shoved the other over to me

Are you positive that Paterson did not pay you?—Yes

Did Paterson, when he gave him the money, divide it into two parcels?

Burke and Hare.

William Hare

—He put the two pounds together, and Burke counted the silver. Paterson put four notes separate, two and two and he halved the silver, and some of the two, I do not know which of the two, paid the porter; and Burke shoved my share over the table

Pray, sir, had you had many quarrels or disputes with Burke about these payments?—No, I never had any What payments?

Payments received from Dr Knox or his assistants?—No, not about that matter.

Had you ever any quarrels with Burke about money matters at all?—None

Well, I think you told us, Hare, that the old woman went out to the passage and called out murder or police?—She was crying one or other of these I can't say which

You pushed her over a stool, you say?—After that, she was leaning on her elbow and sitting on her backside

Was it before or after this that she went into the passage?—It was before this

Was it a minute or two?—It was just a little before it, I could not say.

And was brought back by M'Dougal, you say?—Yes

Well, you say that when Burke destroyed her she cried a little and moaned Was that like the moan of a person suffocating, the time he got on her?—Yes, I thought she gave a great shout like a person choking It was like a person strangling

You could have heard it a good way off?—No, sir

About the time that that sound was, was there any person calling out for the police, or murder?—I did not hear any at that time

Had you and Burke been fighting before this screech?—Yes

Were you fighting after that screech?—No, not after.

Were you fighting during the time of the screech?—No.

Were you fighting at the time that that screech was going on?—No.

And were you not fighting after that?—No

Then all your fighting was before that screech?—Yes

I think you have told us that this man Brogan and the two women had been in bed in the morning, and that you and the other man, Burke, was not?—Yes

Where was Brogan lying in the morning?—Brogan was lying next the wall in the morning.

Where was you lying?—I was sitting in the chair with my head upon the bed

Where was the other man?—He was sitting at the fire

Did you see Brogan come in?—I did not

Now, sir, when Burke was on the top of this person, destroying her, where were you?—I was sitting on the chair in the same room.

How long was he dealing with her?—I could not say how long

How long?—About ten minutes

And did you sit in the chair?—Yes.

And did you sit ten minutes on that chair without stirring one hand to help her?—Yes

Evidence for Prosecution.

William Hare

The women went out to the passage?—Yes.

Did you go out?—No

Were the women during part of that time in the bed with the rug over them, before they went out into the passage?—I could not say whether their heads were covered with the rug or not.

You did not cover your head?—No.

You stood and saw it with your own eyes?—Yes.

You did not call murder or police?—No

Not a word?—No

Did you go to the police next day and give information?—No

You did not do that, but you took the body to Surgeons' Square?—The porter did

You followed him?—Yes

And you took money for it?—Part

And next day, in the Police-Office, you denied that you knew anything about it?—Yes

Were you examined in the Police-Office on oath?—No

By LORD MEADOWBANK—You were examined in the Police-Office as a prisoner?—Yes

That was the position you were examined in?—Yes

And it was under that charge you were called on to say whether you knew the body or not?—Yes (*Witness was removed from Court in custody of a Macer*)

16 MARGARET LAIRD or HARE, sworn by LORD MEADOWBANK

LORD MEADOWBANK—Margaret Laird or Hare, we see from the list of witnesses, that you are a prisoner in the Tolbooth of Edinburgh, and we understand that you are implicated in a charge of the crime of murder, for the murdering of an old woman of the name of Docherty, Campbell, or M'Gonegal. It is my duty to tell you, that for anything connected with that murder you can never be brought to trial if you speak the truth. You are brought here as a witness, and that is your protection, but your being brought here as a witness, and bound to speak the truth, and the whole truth, and nothing but the truth, the Court requires that you shall do so; and that you are bound to speak nothing but that to which you are sworn to speak, not to the other murders, and you may rest assured, that if you deviate in any particular from the truth, most unquestionably you will be detected, and the most severe and exemplary punishment will follow, and from where you now stand, you will undergo that punishment which the Court for the administration of justice, finds it necessary to employ

Examined by the LORD ADVOCATE—You are the wife of William Hare. the man that was here just now?—Yes

And you live at Portsburgh?—Yes, sir

You remember last Hallowe'en night?—Yes, sir.

Did any strangers sleep in your house that night?—Yes

Is Gray the name of the man?—Yes

Did he and his wife sleep in your house that night?—Yes

Burke and Hare.

Margaret Laird or Hare

How did that happen, did they lodge in your house?—No, they were stopping in Burke's house Burke asked me to give them a bed that night.

For one night, or more?—Just for one night

What time of day was this, do you remember?—I could not say, it was in the course of the day.

Was it in the early part of the day, Mrs Hare, was it before dinner?—I do not remember, sir

Was it daylight?—Yes, sir, I am quite sure it was daylight, so far as I remember

Well, then, say what you remember, neither more nor less than what you recollect Did you go out that night in search of your husband?—Yes, sir, I did

About what time of night was it?—Between eight and nine o'clock

Where did you find him?—I found him in John Connoway's

And who was in Connoway's at the same time?—Connoway and his wife, William Hare and me, and Burke and his wife.

Was Burke there?—I do not recollect whether Burke came in or not

Was M'Dougal there?—Yes, she was

Had you drink there?—Yes, spirits

Had you a great deal of spirits?—I could not say

Were they all affected with liquor?—Not much

The old woman was in Burke's?—Yes

Did you not see her in Mrs Connoway's?—Not that I recollect

Did you stay long with them?—I stopped there till my husband rose and I asked him to come home, and he said he would come home after a little.

Did you go into Burke's house?—Yes.

Hare and M'Dougal and you?—Yes

Did Burke come in there?—Yes.

Did you see an old woman there?—Yes

Was she there when you came in and went out?—Yes

Was there a quarrel betwixt Burke and your husband that night?—Yes.

Was there a fight?—Yes

Did you try to separate them?—Yes, I went in between them; I separated them

Did they fall a-fighting again?—Yes, and the old woman cried out murder She went out to the passage, and came back again, and fell backwards she got a push, and fell down upon the ground, but I do not know who gave her the push.

Now, what more did you see?—I saw Burke lying on the top of her, whether on her mouth or on her breast I could not say.

Did she make a noise?—I could not say, for Mrs M'Dougal and me flew out of the house, and did not stop in it

You went into the passage, in short?—Yes.

And you remained there some time?—Yes.

Did you cry out?—No, sir, I was quite powerless; and neither her nor me cried out.

How long did you stay in this passage?—I could not exactly say, sir.

Evidence for Prosecution.

Margaret Laird or Hare

A quarter of an hour?—I dare say it would be that, sir.

Now, when you came back again, did you see the old woman?—No, sir.

Seeing nothing of her, what did you suppose?—I had a supposition that she had been murdered *I have seen such tricks before*

Was that your supposition?—Yes

And you asked no questions?—No

Did M'Dougal ask any questions?—No, she did not

Did you lie down on the bed?—I do not recollect.

Where were you at the time that Burke laid himself down upon the woman?—I was standing betwixt the door and the bed I thought formerly I was lying down, but I think now that I was not.

Were you close to the door?—Yes

Was that close to the bed?—Yes

There was very little room betwixt the door and the bed?—Yes, very little, sir

By the LORD JUSTICE-CLERK—The woman had fallen down, and Burke had laid himself upon her How long might he have remained upon her before you left the room?—Not many minutes, whenever I noticed her I ran out of the door

Examination continued—Where was M'Dougal? You say you was close to the bed—where was she?—I cannot say exactly whether she was standing near me I flew out of the house at the time

Were you the worse of drink at that time?—No, sir, I was not, I had a glass, but I was not the worse of it.

Who went out first?—It was I, sir

Were you alarmed at this sight?—Yes, sir; we were both alarmed, and we both flew out of the house

What did you see Burke do?—I did not see him do anything, but saw him lay down himself upon her breast

Where was your husband at the time?—Near the dresser.

You say you suspected had you any particular reasons to suspect that mischief? Did M'Dougal speak to you about that?—Yes, in the afternoon.

On Hallowe'en day?—Yes, in the course of the afternoon

Did M'Dougal come to your own house?—Yes.

What did she say?—She said there was a *shot* in the house; that was the very word that she used

Did she say any more about the shot?—No, sir, she did not.

Did she mention about a woman?—No

Did she say anything about her husband?—Yes, sir, she mentioned he had fetched her in out of some shop.

How did you know that she was a woman?—She told me that it was a woman

At the same time that she mentioned about the shot?—Yes

Now, did she say expressly that they meant to make away with this woman?—No

Did you understand it in the house, that that was the person meant to be made away with?—Yes, sir, I did

Did she say anything about what was to be done with the woman that night?—No, sir, she did not

Burke and Hare.

Margaret Land or Hare

You said your reason in understanding the word *shot* was, you had heard that word expressed on former occasions with that meaning: the meaning of murdering a person, or making away with them?—Yes

Was there anything passed about giving the woman drink that night?—No

They gave her drink when you was there?—Yes, they gave her some drink

Were they pressing drink upon her that you saw?—No, they were not, that I saw

Was the woman affected with drink at the time you saw her?—Yes, she was rather the worse of drink

Well, you remained there all night?—Yes We stopt there till between four and five o'clock (*next morning*)

Did Mr Paterson come in?—Yes

Did Burke and he come in together?—Yes, the one shortly after the other.

And you stayed in that house all night?—Yes; I had been lying asleep

At the time that Mr. Paterson came in?—Yes

You did not hear what he said, or anybody else said?—No

Was anybody else in bed with you at that time?—No

Do you know where the body had been put on that night?—No, but from what I heard next day, it was lying under the bed

Do you know that it was removed away?—Yes

Was there a box got for it?—Yes

Did you carry the box?—Burke asked me to get a box to him for holding old shoes We went to Rymer's shop, Burke got a box, and M'Culloch the porter took it away

You know the body was put into that box?—Yes

Did you follow your husband and Burke at the time that it went away?—Not at that time, we found them after in the Cowgate.

What did you follow them for?—To prevent them from fighting, in case they might be drunk

Where did you go?—We went to Newington, and then came home again.

What answer did you make to her when she spoke about the *shot*?—Nothing that I recollect of I gave her no answer that I recollect

Did you not dissuade her from these things?—I neither said one thing or another, that I mind

Did you and M'Dougal ever talk of this matter afterwards?—Not that I recollect

In your way to Newington?—No, I do not recollect of saying anything about it. I have a very bad memory.

And did M'Dougal ever express any regret that this woman had been killed in this way?—None, sir, that I heard.

What passed betwixt you and her when you were in this passage, about a quarter of an hour?—We had a few words; but I do not recollect what passed.

Was it just staying there till the thing would be over?—We were just

Evidence for Prosecution.

Margaret Laird or Hare

speaking something concerning the woman, but I do not recollect what it was

Though you do not recollect the words, you may remember the import of it?—Yes, sir

And what do you think you was saying about her?—We were just talking about her, saying, perhaps it would be the same case with her and I

By LORD MEADOWBANK—Is that to say that you might be murdered; is that what you mean?—Yes, sir

You know that Mrs Connoway lived next door there, and you know that there was a Mrs Law lived on the opposite side of the passage; did you not think of going there?—I dreaded to go there, as I had left my husband three times The thing had happened two or three times before, and it was not likely that I should tell a thing to affect my husband

I thought you said you left your house three times altogether?—I left it for to go away altogether, for I was not contented to stay—not leading a contented life

By the LORD JUSTICE-CLERK—You mentioned that the old woman did go to the door to the passage before she fell down, she went forward to the door and out of the door into the passage?—No, she did not go out of the door at all, there are two doors, and she went to the first door, just entering it

That is the door of the room?—Yes, sir

Did she come back of herself, or did anybody bring her?—She came back of herself

And it was after she so came back that she fell down?—Yes; I rather think she got a push

After falling down, did she remain long in that position where she fell?—I could not say, sir, I left the house

Did Burke fall on her immediately on her falling down?—Yes, immediately on my leaving the house

You say she got a push and fell down, was it very soon after that that Burke fell upon her?—Yes, very soon after that

Would you be so good as tell us I should like to know from you what was he doing to her at the time you ran out?—I could not say what he was doing to her, he was just lying upon her breast and on her mouth

Did she give any scream to alarm you?—She cried murder.

What time did she cry murder?—At the time that Hare and him were quarrelling

But at the time that Burke lay upon her breast or mouth did she give any groan?—The woman was not saying anything or calling out I was afraid to see anything would come upon the woman

By the LORD ADVOCATE—Afraid to see her murdered, is that what you mean?—Yes, sir.

By LORD MEADOWBANK—Now, when you saw this, was your fear occasioned or created by what had passed between you and M'Dougal in the fore part of the day, when she told you of a "*shot*," by which you understood this woman was to be murdered?—No, I passed no thought of it at the time.

You went there that night, and found the old woman in the house;

Burke and Hare.

Margaret Laird or Hare

now, upon the oath that you have taken, did you or did you not expect that night that that old woman was to be murdered?—No, I did not, sir

Will you tell me this, why did you think the old woman was kept in the house by Burke then? She was a beggar woman?—Why, I cannot swear what he was keeping her in the house for, I had no idea, sir; I just came round to spend the night of Hallowe'en, and I made a remark, that I did not wish to leave my own house that night

Cross-examined by the DEAN OF FACULTY—You say that the woman got a push, who gave her that push?—I could not say which of them, I could not say whether it was Hare or Burke that pushed her, I could not say, they were fighting *through* the floor

Was she ever from the ground after she was pushed down?—I did not stop to see

Now, was it instantly when she was pushed down that he got above her?—Yes, sir

There is a door at the outer end of the passage, is there not?—Yes

How is it fastened?—With a latch, or a natchet

In the inside?—I do not recollect, I never paid any attention to it.

When you was in the passage did any person knock upon that door?—None that I heard, sir

When you were in the passage did you hear the old woman cry?—No, sir, I did not

Did you hear her make any noise?—No, sir

You heard her make no noise?—No, sir

You say you was very much alarmed when you went into the passage Why did you not go out?—I had no power to go out

You did not say anything when you came into the room?—No, sir.

Not a word?—No

Did Hare say anything?—No, sir

Where was he when you came into the room?—They were both standing in the house; either standing or sitting, I could not say which

Well, after you came in again you went to bed?—I just came in and went to bed; I was not sleeping

Did you fall asleep?—Yes; afterwards I fell into a *dose*

Was there a man Brogan that came in?—Yes

Did he go to bed at all?—We had a dram after Brogan came in; they had not a bed in their house but one

Who had the dram?—Burke and M'Dougal, and Hare and him I do not know whether they drank it all or not, but we had a dram

Well, there was but one bed, did you come out of the bed when you was getting the dram?—Yes

What did you do?—I rose out of bed when Paterson went out.

Well, did you go into bed again?—No, sir.

Was M'Dougal in bed?—No, sir

Was Brogan in bed?—No, sir; Brogan, M'Dougal, and *me* lay down on the floor

Was Hare in bed?—Burke and he fell to fighting again

Did they fall a-fighting again?—Yes.

Evidence for Prosecution.

Margaret Laird or Hare

Well, what happened on that second fight?—Burke lifted up a stick to strike Hare, and M^r Dougal took it out of his hand

You did not see the old woman get off the ground after she fell?—No, sir

Did you see her try to get up?—No, sir, I did not

You told us that you found your husband in Connoway's, and you stayed some little time there, how long might you be in Connoway's?—I could not say, sir.

And then you went into Burke's, and there were yourself and Hare and the old woman; was the old woman in Connoway's?—No, not that I recollect

Well, you and your husband and the old woman was there in Burke's?—Yes

Was Burke not in when you went there?—I am not sure

Did he go in a little after?—I do not recollect whether he was in, or whether he came in or not, I have a very bad memory

By LORD MEADOWBANK—You had a bed in your house, how did it happen, after all this transaction, you did not go home to your own house?—I was trying to take my husband along with me I did all I could, sir, but I could not get him

17. ALEXANDER BLACK, Surgeon, *examined by* Mr Wood—Were you shown the body of a woman in the Police-Office on the 2d November last?—Yes.

You examined the body particularly?—Yes, I did, externally

Will you state to the jury what you observed about it, what appearance it had, externally?—I did not observe any marks or blemishes about her body whatever, of any consequence

Any wounds?—None of any consequence

Was there any blood about any part of her person or face?—There was some blood about her nose.

Anything else?—There was some blood about her nose, and there was saliva.

Where did the blood appear to come from?—The blood that I saw in the Police-Office was of no consequence, it had not proceeded from any wound or cut

What appearance had the face?—Much swollen

Anything remarkable about the eyes?—They were much swollen too, and the face of a blackish hue.

Did you form any opinion on it, from what you saw, whether the death was occasioned by violence?—My own private opinion was that she had died by violence, but, medically, I could give no opinion, quite certain, of the cause of death

And the appearances you observed, and which you have already stated to the jury, were such as might have arisen from the death being caused by suffocation?—That is my opinion I beg to observe that in many cases it is very difficult to form any opinion with regard to suffocation; and that I really and truly believe, still, in a medical point of view, that it is dangerous to hazard that opinion

Burke and Hare.

Alexander Black

What was your opinion at the time that you examined the body in the Police-Office?—That was my opinion at that time. My opinion was that the woman died a violent death, by suffocation

By the LORD JUSTICE-CLERK—I suppose you mean to add that you cannot be quite positive, but that is your conclusion?—Yes

Cross-examined by the DEAN OF FACULTY—Have you any degree?—No, merely a surgeon for the Police

By the LORD JUSTICE-CLERK—For any considerable length of time?—Between nineteen and twenty years

By the DEAN OF FACULTY—When you say that your private opinion was that this woman must have died of violence, did that partly arise from the circumstances that came before you in the Police-Office?—I beg to observe to you that on the night of Saturday, when a person gave information to the police of a person having been murdered at the West Port, I went there with the officers of police, and we found a quantity of blood, mixed with about 15 or 16 ounces of saliva, and having been told that the woman had lain in that place, I concluded that that saliva must have come from her mouth and nose

I want to know, apart from these circumstances, whether you formed any medical opinion apart from this?—From all the circumstances of the case combined, I am of opinion that she came by a violent death

But from the appearances of the body?—I did at the time

Had you given any medical opinion?—From what I saw of the body, I declined to hazard an opinion

By the LORD JUSTICE-CLERK—I was going to ask you, have you had any opportunities of seeing the fact of persons strangled or suffocated?—I have seen them several times

Many?—I could say many.

Now, the question is, were those appearances you describe on this dead body the same as these?—Exactly the same

And the appearances you saw upon the body corresponded with those you have seen on those other dead bodies?—Yes.

By the DEAN OF FACULTY—Were these instances strangling or suffocation?—Suffocation—probably both

In what manner?—Probably putting soft substances on the mouth, pressing the lungs, and pressing the chest

Where did you see many instances of that?—I have seen cases in the Police-Office of persons brought in in that way

Cross-examined by Mr COCKBURN—Have you ever seen a case of suffocation separate from strangling?—I have known many cases of drink, of people lying on the street, brought in in that way

Were the appearances the same?—Very similar as in this old woman.

Have you had much experience in cases of persons that you knew were suffocated?—I can't say that, except from drink.

What do you mean when you talk of cases coming to the Police-Office as cases of suffocation. were they all from drink?—Yes, I have known six cases in one night. It was in November last, and we did not know which to apply to first.

From drinking?—From drinking.

Evidence for Prosecution.

Alexander Black

Have you known no case of mere suffocation apart from drinking?—None

Were the symptoms here like those you have seen in suffocation from drinking?—Yes.

Were the appearances of this woman's body like those you have seen in many cases that night?—Yes

Were the appearances on these persons like these you saw on the body of this old woman?—They had a resemblance

Now, if you had seen this corpse, this old woman's body, and had known nothing whatever of the other circumstances in the case, and just put before you without any other, take this view of the case, suppose you had never seen the house, and never heard a word spoke about it, but that woman's body laid down in the like enumerated circumstances, could you say that it was or was not suffocation from drinking?—I must say that in a number of those cases they had all the appearance—very much swollen and black

Were the eyes swollen?—Yes, and in a measure started from the sockets

That is what we commonly call a good deal started from their sockets?—They were.

By the LORD ADVOCATE—In cases of suffocation from drink, did you ever observe blood and saliva as you observed here?—No, unless they sustained some injury, from a person falling, or so

Suppose you had found this body lying contiguous to the house, what opinion would you have formed?—I would have thought the person had died from suffocation

You would have had no doubt of it then, would you?—No

You would not have considered that as proceeding from intoxication, but from other violent death?—Yes

By LORD MACKENZIE—In cases of suffocation from drink, do you mean to say that the person should be drunk, and fall upon the face, and be suffocated?—Yes

18 Dr. ROBERT CHRISTISON, *examined by the LORD ADVOCATE*—You examined a body shown to you by Fisher in the Police-Office?—I did, along with Mr Newbigging.

Where was it you examined it?—In the Police-Office, minutely, on Sunday, the 2d November, and on Monday, the 3d.

Do you recollect the appearances?—The external appearances in the first place were several contusions on the external parts of the body; and, in the second place, a fluidity of the blood internally. The external appearances first noticed were contusions on both legs; and on subsequent examination, we found one on the left loin, another larger on the left shoulder blade, another small one upon the inside of the upper lip, and two upon the head

What part?—One upon the back part of the left side of the head, and the other on the forepart of the right side.

What were the other appearances?—Pale lividity of the features generally, and dark lividity of the lips; great redness and vascularity

Burke and Hare.

Dr. Robert Christison

of the whites of the eyes; an unusual want of lividity, I may say a total want of lividity, upon every other part of the body but the face, ruffling of the scarf-skin under the chin.

Where is that?—Over the upper part of the throat, immediately under the chin.

Well?—Internally, we found general fluidity of the blood, and an accumulation of it in the right cavities of the heart. In the middle of the neck we found the ligaments connecting the posterior part of two of the vertebrae torn, blood effused among the spinal muscles near the laceration, and likewise among the other spinal muscles, as low down as the middle of the back, also a small extravasation of blood into the cavity of the spine. We could find no appearance of natural disease, no appearance, at least, that could have led to death; the only sign of natural disease we could perceive, was a very slight incipient disorder of the liver, all the other organs in the head, the chest, and the belly, were unusually sound. I forgot to mention a very small trace of blood on the left cheek, fluid blood, issuing from the nose or the mouth, likewise a very slight contusion over the left eye. These were all the appearances that I recollect.

By Mr WOOD—What part of these injuries you have described, either externally or internally, seen by you in this body, might have been occasioned, in your opinion, during life?—This question is rather a new one, in some particulars at least, and, in consequence, I have been led to pay particular attention to it. My opinion on the points which I have to mention, is not founded on mere physiological reasoning, but on actual observation. I consider that the contusions could not have been produced after death as before it, I mean, that an injury properly applied, eighteen hours after death, namely, the effusion into the spinal canal, and the effusion of blood among the spinal muscles, may have been caused quite as well after death as before it,—I mean, that an injury properly applied, eighteen hours after death, would produce precisely the same appearances that Mr Newbidding and I found in this woman tearing of the ligaments, and effusion of blood into the spinal canal.

By the LORD ADVOCATE—Would the pressure of a body into that box, (*the old tea-box was pointed out to witness*), have been calculated to produce that effect?—From all that I have understood, I think it would. The mode in which the body was packed might have that effect; the pressing down the head would lead to that effect.

From the appearance of the body alone have you formed an opinion which you considered the most likely mode in which this woman came by her death?—There are certain appearances I have described that would justify a suspicion of death by suffocation, such as strangling, smothering, or throttling. These are all of them forms of suffocation. The form I suspected most was throttling, in consequence of the appearance of the cuticle under the chin.

By LORD MEADOWBANK—What do you mean by throttling?—The hand is applied under the chin, on the throat, and pressure is made upwards and laterally at the same time. I wish to explain. I mean those appearances that I have described would only justify suspicion, but I have other circumstances.

Evidence for Prosecution.

Dr Robert Christison

By the LORD ADVOCATE—How applied?—By applying the hand and pressing upwards, the root of the tongue is pressed against the back of the throat, and the access of air to the lungs is prevented. I said that we found marks of violence from contusions throughout the body. When I add to this the appearances of suffocation, the want of any appearance to account for natural death, and likewise the fact, which I presume I may add, from the evidence I heard to-day, that this woman was dead a very short time indeed after she was seen alive and in health, and farther, the blood that was found where the body lay, from all these circumstances put together, my opinion is, that death by violence is very probable. I do not think that the medical circumstances could justify a more certain opinion.

Suppose this woman had met her death as described by Hare and his wife, were the appearances conformable?—I think so.

Suppose this woman had died from suffocation produced solely by drinking, would the appearances correspond, taking into account the blood? Of course, I understand that in suffocation from drinking the woman would have her mouth obstructed in some way or another?—I presume the appearances would correspond, if the suffocation was produced by the woman, for example, falling on her face in a puddle, or by her face being squeezed against a pillow. All species of suffocation may cause a discharge of blood after death. The appearance of blood discharged from the mouth and nose after death, might be produced by any species of suffocation.

By LORD MEADOWBANK—Under that case, do I understand that you mean to include this, if the woman fell upon her mouth and nose from intoxication, and the blood in that way came to her head, do you count that suffocation? Suppose all this done from intoxication, does it suffocate and prevent the air from entering the lungs?—There must be some mechanical obstruction, to cause suffocation in the ordinary sense of the word; without such obstruction, death from simple intoxication would be accounted a variety of poisoning.

You do not speak to a death occasioned under such circumstances?—No.

Cross-examined by Mr COCKBURN—I think you mean to say this, that death from simple intoxication arises ultimately from the exclusion of air into the lungs?—Yes, speaking physiologically, death takes place in that way.

Are you aware that persons who do not die in that way, by getting themselves intoxicated, may die, because they fall into uneasy situations?—Yes.

Separate altogether the externals that were taken, of the blood being found in the room, separate from your mind the fact of the woman having good health before, look upon this as a body of which you knew nothing; was there anything in that body that indicated death by violence?—I thought the appearances would justify the suspicion, but more so, when coupled with other circumstances. I never would give my opinion ultimately and decisively upon a case of this kind, without inquiring into the collateral circumstances I have mentioned.

We can judge of other circumstances as well as medical men. You

Burke and Hare.

Dr Robert Christison

think these views justify a suspicion, and also, you think these appearances in the body merely suspicious?—Yes

With them join the other circumstances, would they justify more than a probability?—Nothing more I have stated that distinctly I wish to mention distinctly to the Court, that, in such a case, a knowledge of the previous circumstances I have alluded to, is necessary for medical men forming an opinion whether it is possible the person could have died of any of those diseases which do not leave morbid appearances in the dead body

By the LORD JUSTICE-CLERK—Did you open the stomach of this person?—Yes

Did you observe anything particular in it?—Half-digested porridge

Had it any smell of whisky?—No If it had the smell of whisky, or any narcotic, I should have perceived it

Had the woman been in a dangerous state of intoxication, would there have been the smell of spirits in the stomach?—Not necessarily, my Lord

By LORD MEADOWBANK—Is there generally a smell of spirits there, if the person has been intoxicated?—Not always I remember a reported case where the person died of long continued intoxication, and where it was not perceived in the stomach, although it was found in the brain

Is there any other case that has fallen under your own observation where it was not perceived?—None, but where it was perceived

If the fluid had remained in the stomach, is it your opinion that it could not have been evaporated?—If there was any portion remaining which I could have discovered by chemical analysis, I should have perceived it by the smell

Declarations of the Prisoners.

The declarations were then read over to the jury as follows.—

FIRST DECLARATION OF WILLIAM BURKE

At Edinburgh, the 3d day of November 1828.

IN presence of GEORGE TAIT, Esq, Sheriff-Substitute of Edinburghshire, appeared WILLIAM BURKE, at present in custody, who being examined, declares, That he is thirty-six years of age, and he was born in Ireland, and he came to Scotland about ten years ago That he is a shoemaker, and he has lived for rather more than a year in the West Port, and about two months ago, he went to the house in the West Port in which he at present lives, but he does not know the name of the entry, and the prisoner, Helen M'Dougal, has lived with him for about ten years, but she is not married to him Declares, That he at first lodged in his present house with a man named John Brogan; but Brogan went away about ten days ago, and the declarant now lodges in the house by himself Declares, That James Gray, and his wife and child, came to lodge with the declarant about a week ago. Declares, That on the night of Thursday

Declarations of the Prisoners.

William Burke

last, the 30th of October, no person was in the declarant's house, except Helen M'Dougal, Gray, and his wife. Declares, That on the morning of Friday last, he rose about seven o'clock, and immediately began his work by mending a pair of shoes. That M'Dougal rose about nine o'clock. Declares, That Gray rose about six o'clock, and went out. That Gray's wife rose soon afterwards, and lighted the fire, and the declarant then rose, as before mentioned. Declares, That he went out about nine o'clock to get some tobacco, and he returned in a few minutes, and they all four breakfasted together about ten o'clock, and the women were occupied through the day in washing and dressing, and sorting about the house, and Gray was going out and in, and the declarant was working; and declares, That on Friday evening he told Gray that he and his wife must go to other lodgings, because he could not afford to support them any longer, as they did not pay for the provisions which they used; and they went away, and the declarant accompanied them to Hare's house, to which he recommended them. Declares, That he thinks Gray and his wife went away at five o'clock. Declares, That about an hour afterwards, when he was standing at the mouth of the entry, a man came forward to him dressed in a great coat, the cape of which was much up about his face. That he never saw the man before, and does not know his name. That the man asked if the declarant knew where he could get a pair of shoes mended; and the declarant, being a shoemaker, took him home with him, and got off the man's shoes, and gave him an old pair in the meantime. That while the declarant was mending the shoes, the man walked about the room, and made some remarks about the house being a quiet place, and said that he had a box which he wished to leave there for a short time and the declarant consented. That the man went out, and in a few minutes returned with a box, which he laid down upon the floor near the bed, which was behind the declarant, who was sitting near the window with his face to it. That the declarant heard the man unroping the box, and then making a sound as if he were covering something with straw; and the declarant looked round, and saw him pushing the box towards the bottom of the bed, where there was some straw on the floor, but he did not observe anything else than the box. That the man then got on his shoes, paid the declarant a sixpence, and went away. That the declarant immediately rose to see what was in the box, and he looked under the bed, and saw a dead body among the straw; but he could not observe whether it was a man or a woman: That soon afterwards the man came back, and declarant said it was wrong for him to have brought that there, and told him to put it back into the box, and take it away. That the man said that he would come back in a little and do it, and then went away, but he did not return till Saturday evening about six o'clock, and when he did not return on Friday night, the declarant took the box into the entry, but allowed the body to remain under the bed. Declares, That on Saturday morning about ten o'clock, he went out to the shop of a Mr. Rymer, in the West Port, and when he was there, a woman came to the door begging, whom he had never seen before. That the people in the shop refused to give her anything; and the declarant discovering from her dialect that she came from Ireland, asked her from what part of it she came. she said it was from Innishowan, which is a small town

Burke and Hare.

William Burke

in the north of Ireland, and he then asked her name, and she said it was Mary Docherty, and the declarant remarked that his mother's name was Docherty, and that she came from the same part of Ireland, and that therefore they might perhaps be distant relations, and as she said that she had not broken her fast for twenty-four hours, if she would come home with him he would give her breakfast, and she accompanied him home, and got breakfast, at which time the only other persons in the house were Helen M'Dougal, Gray, and his wife. That she sat by the fire till about three o'clock in the afternoon, smoking a pipe, the declarant going out and getting a dram, because it was Hallowe'en, and they all five partook of the dram, sitting by the fireside. Declares, That at three o'clock Mary Docherty said she would go to the New Town to beg some provisions for herself, and she went away accordingly. Declares, That he thinks Helen M'Dougal was in the house when Mary Docherty went away, but he does not remember whether Gray or his wife were in the house, and does not remember of any other person being in the house. Declares, That a few minutes before Mary Docherty went away, William Hare's wife came into the house, but went away into the house of a neighbour, John Connaway, immediately before Docherty went away, and he thinks that Hare's wife or Connaway's wife may have seen Docherty go away; and Mary Docherty never returned. Declares, That Helen M'Dougal and Gray's wife then washed the floor and cleaned out the house. That there was no particular reason for doing so further than to have it clean upon the Saturday night, according to their practice, and the declarant continued at his work. That soon afterwards Gray and his wife went away, and Helen M'Dougal went to Connaway's house, leaving the declarant by himself, and the declarant had not mentioned to any person about the dead body, and had no suspicion that it had been discovered. Declares, That about six o'clock of the evening, while he was still alone, the man who had brought the body came, accompanied by a porter, whom the declarant knows by sight, and whose stance is somewhere about the Head of the Cowgate, or the Foot of the Candlemaker Row, and whose Christian name he thinks is John. That the man said he had come to take away the body; and the declarant told him the box was in the entry, and the porter took it in, and the man and the porter took the body and put it into the box and roped it, and the porter carried it away. Declares, That when the man came with the porter, he said he would give the declarant two guineas for the trouble he had in keeping the body, and proposed to take the body to Surgeons' Square to dispose of it to any person who would take it, and the declarant mentioned David Paterson, as a person who had some connexion with the surgeons, and went to Paterson's, and took him to Surgeons' Square, where he found the man and the porter waiting with the box containing the body: That the body was delivered, and Paterson paid a certain number of pounds to the man, and two pounds ten shillings to the declarant. That he then went straight home, and was informed by some of the neighbours that a report had been raised of a dead body having been found in the house, and in particular by Connaway's wife, who told him that a policeman had been searching his house, and he then went out in search of a policeman, and he met Finlay and other policemen in the passage,

Declarations of the Prisoners.

William Burke

and he told them who he was, and they went with him to the house, and found nothing there, and they took him to the Police-Office. Declares, That he yesterday saw in the Police-Office the dead body of a woman, and he thinks it is the dead body which was below the bed, but it has no likeness to Mary Docherty, who is not nearly so tall. And being interrogated, Whether the man who brought the body, and afterwards came with the porter, is William Hare? Declares that he is. And being interrogated, declares, That he does not know of any person who saw that Hare had any concern in bringing the body, or in taking it away. And being interrogated, declares, That the porter's name is John M'Culloch, and declares that the box in which the body was contained was a tea-chest. And being specially interrogated, declares, That the woman above referred to, of the name of Mary Docherty, was not in his house on Friday, and he never, to his knowledge, saw her till Saturday morning at ten o'clock. That she promised him to return on the same evening, but she did not, and he does not know what may have become of her. And being interrogated, declares, That he sprinkled some whisky about the house on Saturday, to prevent any smell from the dead body. Declares, That Hare did not tell him, nor did he ask, where he got the body. Declares, That he did not observe whether there was any blood upon the body. And being specially interrogated, declares, That he had no concern in doing any harm to the woman before referred to, of the name of Mary Docherty, or to the woman whose body was brought to the house, and he does not know of any other person being concerned in doing so. Declares, that Docherty was dressed in a dark gown. And being shown a coarse linen sheet, a pillow-case, a dark printed cotton gown, and a red striped bed-gown, to which a label is affixed, and signed by the declarant and Sheriff-Substitute as relative hereto, declares, That the sheet and pillow-slip are his, and he knows nothing about the dark gown and bed-gown. That the blood upon the pillow-slip was occasioned by his having struck Helen M'Dougal upon the nose, as is known to Gray and his wife, and the blood upon the sheet is occasioned by the state in which Helen M'Dougal was at the time, as is known by Gray's wife.—All which he declares to be truth.

WM BURKE

G. TAIT.

ARND SCOTT

A. M'LEWIS

A. MACLEAN

SECOND DECLARATION OF WILLIAM BURKE.

At Edinburgh, the 10th day of November 1828.

In presence of GEORGE TAIT, Esq, Sheriff-Substitute of Edinburghshire, appeared WILLIAM BURKE, present prisoner in the Tolbooth of Edinburgh, who being examined, and the declaration emitted by him before the said Sheriff-Substitute at Edinburgh, upon the 3d day of November current, having been read over to him, he declares that it is incorrect in several particulars. Declares, That it was upon the Friday morning, and not upon the Saturday morning that the woman named Mary

Burke and Hare.

William Burke

Docherty came to the house, and that all that is said with reference to that woman up to her going out to beg at three o'clock happened upon the Friday, and not upon the Saturday, and declares, That the floor being wet in consequence of Helen M'Dougal and Gray's wife washing in the house, these two women washed the floor then, rather than defer it till next day, and the floor was usually washed twice a-week, and it was usually washed on Saturday as one of the days. That those two women continued doing things about the house, and the declarant continued working till it was duskish. That the declarant then stopped work, and went out and brought in a dram, because it was Hallowe'en, and he and the two women sat by the fire and drank the dram, and while they were doing so William Hare came in, and the declarant went for more drink, and they all four sat drinking till they got pretty hearty. Declares, That when he was out for drink the second time, he found, when he came back, that Mary Docherty had returned, and was sitting by the fire, and she drank along with them: That when it was pretty late in the night, but he cannot mention the hour, he and William Hare differed, and rose to fight, and the three women were still in the house drinking, and Mary Docherty had become much intoxicated. Declares that while he and Hare were struggling together, Helen M'Dougal and Hare's wife did what they could to separate them, but declares, that there was no noise, and in particular there were no cries of murder. Declares, That after they were separated, they sat down by the fire together to have another dram, and they then missed Mary Docherty, and asked the other two women, what had become of her, and they answered that they did not know, and the declarant and Hare searched for her through the house—and they both went straight to the straw of the shake-down bed upon the floor at the bottom of the standing bed, to see whether she had crept in there, and they found her among the straw, lying against the wall, partly on her back and partly on her side. That her face was turned up, and there was something of the nature of vomiting coming from her mouth, but it was not bloody. That her body was warm, but she appeared to be insensible, and was not breathing. That after waiting for a few minutes, they were all satisfied that she was dead, and the declarant and Hare proposed to strip the body and lay it among the straw, but they did not at that time say what farther they proposed to do, and Helen M'Dougal and Hare's wife immediately left the house, without saying anything, and the declarant supposed it was because they did not wish to see the dead body; That the declarant and Hare waited till the neighbours should be quiet, there being a considerable stir among the neighbours on account of its being Hallowe'en, and in particular in the house of Connaway, who lives in the same passage, in case any of the neighbours should come in upon them; and they then stripped the body, and laid it among the straw; and it was then proposed by both of them, but he cannot say by which of them first, to sell the body to the surgeons, and they both arranged that they would sell the body to David Paterson, whom they knew to be a porter to Dr Knox, in Surgeons' Square, and who they knew received subjects, and that they would put the body into a tea-chest and get it conveyed to Surgeons' Square the following evening; and they then sat down by the fire

Declarations of the Prisoners.

William Burke

again, and Helen M'Dougal and Hare's wife then returned, but nothing was said by any person about the dead body That Hare and his wife then went home, at which time it would be near twelve o'clock on the Friday night, and the declarant and M'Dougal went to bed and fell asleep, and rose next morning soon after six o'clock. Declares, that Gray and his wife came in about eight o'clock in the morning, and lighted the fire, and prepared breakfast, and they all got breakfast together; and the declarant then went out and brought in a dram, and sprinkled it under the bed and upon the walls, to prevent any smell Declares, That he went out about twelve o'clock noon, and was out for about two hours walking about, and when he returned he found Gray and his wife and Helen M'Dougal still in the house, and after that he was occasionally out Declares, That after it became dark he went to call for Paterson, but found that he was out, at which time it was past five o'clock That he then got John M'Culloch, a porter, and took him to the passage of the declarant's house, and then left him there, and went into the house and found William Hare there, but no other person, and he also saw an empty tea-chest upon the floor, and they both immediately put the body of the woman into the tea-chest, and they roped it up with a line which hung across the house for drying clothes, and they called in M'Culloch, and put the tea-chest upon his back, and told him to follow Hare, but they did not tell him what was in the tea-chest, nor did he ask them, and the declarant then went straight to Paterson's house, and found him at home, and told him that he had sent forward a subject to Surgeons' Square; and he has no recollection of having seen Paterson on the Friday, or on the Saturday before that time Declares, That Paterson and the declarant then went to Surgeons' Square together, and they found Hare and M'Culloch waiting there with the tea-chest, and Paterson opened the door of the cellar, and the tea-chest was put into it: That Paterson then went and got five pounds, and gave it to the declarant and Hare, and they paid the porter, and then went to their respective homes, and the declarant, on his way home, met Helen M'Dougal, and when they got home, they heard from Connaway's wife the report of policemen having searched his house for a dead body, and he then met with Finlay, the criminal officer, and he was apprehended, and taken to the Police-Office, as formerly mentioned And being interrogated, declares, That he cannot say whether the dead body he saw in the Police-Office on Sunday the 2d current be the body referred to And being interrogated, declares, That he had no concern in killing the woman, or in doing any harm to her; and he has no knowledge or suspicion of Hare, or any other person, having done so, and it is his opinion that the woman was suffocated by laying herself down among the straw in a state of intoxication And being interrogated, declares, That no violence was done to the woman when she was in life, but a good deal of force was necessary to get the body into the chest, as it was stiff, and in particular, they had to bend the head forward, and to one side, which may have hurt the neck a little; but he thinks that no force was used, such as could have hurt any part of the back at all. And being interrogated, declares, That no other person had any concern in the matter, and in particular, declares that a young man named John Brogan had no concern in it: That Brogan came into the house on Saturday fore-

Burke and Hare.

William Burke

noon, as he thinks, while the body was in the house, but did not know of its being there —All which he declares to be truth

ARCHEL SCOTT

A M'LUGAS

A MACLEAN

WM BURKE

G TAIT

FIRST DECLARATION OF HELEN M'DOUGAL

At Edinburgh, the 3d day of November 1828

In presence of GEORGE TAIT, Esq., Sheriff-Substitute of Edinburgh-shire, compelled HELEN M'DOUGAL, at present in custody, who being examined, declares, That she is thirty-three years of age, and she was born in Stirlingshire. That she never was married, although she has lived with the prisoner, William Burke, for ten years. That about a year ago, they came to reside in Tanner's Close, West Port, and about three months ago, they went to another close in the West Port, but she does not know the name of the close. That a person named John Brogan occupied the house in which they at present reside, but Brogan left the house on Friday eight days, and the declarant and Burke, who were living with Brogan previously to his leaving the house, took possession of it by themselves. Declares, That James Gray and his wife came to live with Burke on Sunday, the 26th of October. Declares, That the only persons who were in the house on the night of Thursday, the 30th of October, were Gray and his wife, and Burke and the declarant, That Burke and the declarant rose from bed on Friday morning about ten o'clock, and Ann Gray made breakfast for them, and when she was making breakfast for them, Burke went out, and said he was going to the shop, which she understood to mean that he was going to get a dram, and he came in when breakfast was ready, and in about five minutes afterwards, when they were taking breakfast, a woman came in whom the declarant had never seen before, and who afterwards said that her Christian name was Mary, That Mary appeared to be the worse of liquor. That she asked leave to light her pipe at the fire, and she then asked a little bit of soap to wash her cap and short-gown, and her apron, and the declarant gave her a bit of soap, and she washed her clothes, and Gray's wife dried them and ironed them, and while that was doing, she talked about having come from Ireland in quest of her son, and soon after she came into the house, she said she had got no meat for three days, and the declarant gave her a share of their breakfast. That Burke and Mary entered into conversation, and Burke, upon hearing that she came from Ireland, said that he came from Ireland too, and he did not know but she might be a relation of his mother's. Declares, That about one o'clock in the afternoon, Burke brought in some whisky and gave them a glass all round, it being the custom of Irish people to observe Hallowe'en in that manner. That Mary became very impatient to go away, in order to go to Saint Mary's Wynd to inquire for her son, and she went away about two o'clock. Declares, That Burke had gone out about half an hour before that, and returned about three o'clock, and when he came in, he mentioned that Nancy Connaway, a neighbour, had said to him that she wondered

Declarations of the Prisoners.

Helen M'Dougal

how he could keep Gray and his wife in the house, because the noise of their quarrelling was so unpleasant to the neighbours, and therefore he told them to go away, and never to come back again, because he had not up-putting for them, and Gray and his wife accordingly went away immediately. Declares that Hare's wife happened to be in the house at the time, and said that she would give them a night's lodging, as she had spare beds, and the declarant supposed that they went to Hare's, and it would be about six o'clock when they went away. That Burke went to Hare's house about seven o'clock, and the declarant went about half an hour afterwards. That when she went to Hare's house, Burke was not there, but she went to an adjoining shop and brought him there, and they had some supper and drink there. That the declarant then went home, and Burke followed soon afterwards, bringing some whisky with him, which he had got in a shop, and soon afterwards Hare and his wife came in, and they four had some spirits together, and Nancy Connoway, before mentioned, came in and had a share of the spirits. That the declarant then went to Connoway's house and had a dram, and then returned to her own house, and found Hare and his wife still there. That they almost immediately went away, but very soon returned, and Hare was very much intoxicated, and Hare lay down in the bed, and slept along with Burke all night, and the declarant and Hare's wife slept on the floor. That about six o'clock in the morning Hare and his wife went away. That about seven o'clock, Gray and his wife came in to get some clothes which they left, and the declarant and Burke lay down in bed, and about eight o'clock Burke rose and told Gray's wife, who still remained in the house along with her husband, to sort the house and get the kettle boiled, and he himself went to a neighbouring shop for tea and sugar, and bread and butter. That when Burke came, Gray's wife made the tea, and Gray and his wife and Burke took breakfast together, and a young man named John Brogan came in and got a share of it. That the declarant did not take any of it, That after breakfast Gray's wife washed the floor, and cleaned the house, the declarant being in bed unwell, in consequence of drink which she had had, and Brogan was in the house most of the day. That Gray remained in the house all day. That Burke was sometimes out and sometimes in, and he lay down for a short time. Declares, That about five o'clock that afternoon, the declarant sent Mrs Gray to Mrs Law's with some clothes to get mangled; and Gray and his wife left the declarant's house about seven o'clock to go to their lodgings, and shortly after they so left the house, Mrs Law came and asked the declarant if she gave Mrs Gray orders to get her gown. That the declarant said she had not, and Mrs Law then said that she was off with it, and in a little after, a girl came in and told the declarant that a man was on the street with the declarant's gown, and she went out and found Gray standing at the head of Tanner's Close with the gown under his arm. That she got her gown from Gray, and the declarant and Gray and his wife and Mrs. Hare had a dram together, and the declarant left the gown in Mrs Law's to get mangled. That the declarant then went home and kindled her fire, and she went out for her husband as it was late; and after she found him they went into Connoway's house, where they remained for a few minutes, and Connoway told them that Mrs Gray had been raising a disturbance, and the declarant and her husband were going out of Connoway's house

Burke and Hare.

Helen M'Dougal

when they were apprehended by two policemen, who said that they had taken a corpse out of the house And being interrogated, declares, That she did not see Mary after two o'clock on the Friday, and in particular, she did not see her in the house on the Friday night. Declares, That she yesterday saw the dead body of a woman in the Police-Office, but declares, that it is not the body of the woman named Mary, because Mary had dark hair, and the body of the woman in the Police-Office had grey hair And being interrogated, declares, That she had no knowledge or suspicion of there being any dead body in the house, and in particular, of its being under the bed, till after she was apprehended, and declares, that there is only one bed in the house, and declares, that so far as she knows, nothing was under the bed except a few potatoes, and a little straw which had fallen from the bed And being interrogated, declares, That she had no conversation with Gray regarding a dead body, and in particular, never promised him any money not to say anything about a dead body And being shown a coarse linen sheet, a coarse pillow-case, a dark printed cotton gown, and a red striped cotton bed-gown, to which a label is affixed, and signed by the Sheriff, as relative hereto, declares, That the sheet belongs to a William M'Kim, from whom the declarant got a loan of it that the pillow-case was used for containing dirty clothes, and lay at the head of the bed as a pillow: That she never saw the dark gown before to her knowledge, and declares, that the bed-gown is like the one which Mary wore on the Friday, but she cannot say that it is the same, as it is torn Declares, That Burke had no money on Friday, and he had to borrow money for their breakfast on Saturday morning, but the declarant got three shillings from him on Saturday night about nine o'clock, but she does not know where he got that money And being specially interrogated, declares, That she had no concern in killing the woman Mary, or in hurling her, and does not know of Burke or Hare, or any other person, being concerned in doing so, or in concealing the dead body about the house, or in afterwards disposing of it And being interrogated with regard to some marks of blood on the sheet and pillow-slip, declares, That the marks upon the pillow-slip were from her nose bleeding in consequence of Burke having struck her on last Thursday, as she thinks, and both Gray and his wife know of Burke having struck her, and the blood upon the sheet proceeded from the declarant, in consequence of her state at the time, as was known by Mrs Gray—All which she declares to be truth.—Declares she cannot write

ARCHD SCOTT

A. M'LUKAS

A. MACLEAN

G. TAIT.

SECOND DECLARATION OF HELEN M'DOUGAL.

At Edinburgh, the 10th day of November 1828.

In presence of GEORGE TAIT, Esq., Sheriff-Substitute of Edinburghshire, compeared HELEN M'DOUGAL, present prisoner in the jail of Edinburgh, who being examined, and the declaration emitted by her before the said Sheriff-Substitute at Edinburgh, upon the third day of November

Declarations of the Prisoners.

Helen M'Donald.

current, having been read over to her, she adheres thereto. And being interrogated, declares thereto, That between the hours of three and four o'clock on Friday afternoon, the woman named Mary insisted on having salt to wash herself with, and became otherwise very troublesome, and called for tea different times, and the declarant told her she could not be troubled with her any longer, and thrust her out at the door by the shoulders, and never saw her afterwards. And being interrogated, declares, That Brogan did not bring any woman to the house. And being interrogated, declares, That William Burke and William Hare had a slight difference and a struggle together on Friday night, as she thinks, but there was no great noise made, and no cries of murder, so far as she heard —All which she declares to be truth —Declares she cannot write

ARCHD SCOTT

A M'LUKAS

A MACLEAN.

G TAIT.

The proof for the prosecution was here closed and there being no witnesses in exculpation, the Lord Advocate addressed the Jury on the part of the Crown —

The Lord Advocate's Address to the Jury.

THE LORD ADVOCATE—*May it please your Lordships—Gentlemen of the Jury*—It is now my duty to make a few remarks on the tenor of the evidence which has been laid before you in support of the indictment against the pannels at the bar, and, at this late hour, when you must be exhausted with the long trial in which you have been engaged, I shall endeavour not to detain you long. Indeed, had this been an ordinary case, I should have had great pleasure in leaving the evidence to your own judgment, without one word of comment from me, satisfied that, in the charge which you will receive from the Court, before you retire, a luminous and impartial detail of its substance and bearings will be given. But this is a case of no ordinary complexion, and I am, therefore, called on for some observations, more especially as you will be addressed on behalf of the prisoners by my honourable and learned friends on the other side of the bar, and it might be thought remissness on my part, if I were to allow the evidence to go to you for a verdict, without some remarks on its tendency.

Gentlemen, it affords me peculiar satisfaction to see, in a cause of this kind, so full and formidable an array of counsel for the defence. In all cases, the bar of Scotland does itself honour by undertaking the defence of the unhappy persons who are brought before this Court accused of offences; but, in this case, I am happy to see the most distinguished among my brethren engaged in the defence of the prisoners. It is for the ends of public justice that this should be, and it is a great consolation to me, in the discharge of my painful duty, that the pannels will derive all the benefit which may be looked for, from the knowledge and the eloquence of such distinguished advocates. If an acquittal should follow the pro-

Burke and Hare.

Lord Advocate

ceedings in which we have this day been engaged, I hope it will be acknowledged that I have only done my duty to the public in putting these prisoners on their trial, and, should they be convicted, the country must be satisfied that the conviction will be just, when the defence is in the hands of counsel so eminent, and so universally and deservedly respected.

Gentlemen, this is one of the most extraordinary and novel subjects of trial that has ever been brought before this or any other Court, and has created in the public mind the greatest anxiety and alarm. I am not surprised at this excitement, because the offences charged are of so atrocious a description, that human nature shudders and revolts at it, and the belief that such crimes as are here charged have been committed among us, even in a single instance, is calculated to produce terror and dismay. This excitement naturally arises from detestation of the assassins' deeds, and from veneration for the ashes of the dead. But I am bound to say, that whatever may have occasioned this general excitement, or raised it to that degree which exists, it has not originated in any improper disclosures, on the part of those official persons, who have been entrusted with the investigations connected with these crimes, for there never was a case in which the public officers to whom such inquiries are confided, displayed greater secrecy, circumspection, and ability. It is my duty, gentlemen, to endeavour to remove that alarm which prevails out of doors, and to afford all the protection which the law can give to the community against the perpetration of such crimes, by bringing the parties implicated to trial, and I trust it will tend to tranquilize the public mind, when I declare I am determined to do so. I cannot allow any collateral considerations, connected with the promotion of science, to influence me in this course, and I am fully determined that everything in my power shall be done to bring to light and punishment those deeds of darkness which have so deeply affected the public mind.

Gentlemen, before I proceed to detail the evidence now laid before you in support of the indictment of the prisoners, I must impress upon you what will be more eloquently and emphatically told by their counsel and the Court, that in judging upon the only charge now under trial, you are to banish from your minds all impressions which you may have received from any other source than from the evidence itself. To that evidence alone you must confine your attention,—in particular, you are not to allow yourselves to be moved, by the fact, that there were other charges in the indictment, of a similar description, because these charges have now been entirely withdrawn, for the present, from your consideration. Those charges have been separated from that now to be tried, at the special desire of the prisoners themselves, and to remove any ground of objection that an impression might be created to the prejudice of the prisoners. The pannels are accused of murder,—and the three instances that were libelled, were only three separate facts, in support of that general charge. But since the prisoners and their counsel have made their option to be tried for each separately, and the Court have sanctioned this course, I willingly acquiesce in it. I must say, however, that in framing the indictment, including all the three charges, I was warranted by the practice of this Court; and that my chief object in doing so, was for the purpose of probing to the

Addresses to Jury.

Lord Advocate

bottom the whole system of atrocity, a part of which I have this day brought before you

In going over the proof, gentlemen, it is not necessary that I should read over to you fully the notes of the evidence,—because that will be more ably and authoritatively done by the Court, than it can be by any one in the situation of Public Prosecutor. I shall, therefore, content myself with a condensed and connected reference to its import,—from which, I have no doubt, you will find a verdict of guilty against the pannels

The evidence has been led in the order of time, and I shall observe that order, in what I am now to say. The first witness is *Mis Stewart*. She tells you that *Docherty* had come to her house in the Pleasance, on Thursday, the 30th of October, being the fast day, in search of her son, who had resided there for two months but had quitted the house on the preceding Monday. That not having found him, she left *Stewart's* house next morning, in order to go in search for him. She describes her appearance, and the clothes she had on, and says that she was in perfect health when she left her. She did not again see her in life, but she saw her body in the Police-Office two days afterwards, and had no difficulty in identifying it. The next witness is *Charles M'Lauchlan*, to whose house, in *St Mary's Wynd*, *Docherty* came, on quitting *Mrs Stewart's*, and he tells you that she was then, and had been all the time that she was at *Stewart's*, in perfect health, that she had no money, and that she said she was leaving town. He also saw the body on the Sunday, and identified it. Instead, however, of proceeding on her way, she called at the shop of a person of the name of *Rymer*, about nine o'clock of the same morning, and you see from the evidence of *William Noble*, that when she entered that shop, the prisoner at the bar, *Burke*, was there. This poor woman was without a farthing,—she was begging her way,—he entered into conversation with her, and inquired concerning her family, and says that she was some relation of his mother's. He offers her her breakfast, and thus induces this poor woman to go to his house. This man, in all probability, thought that no human being would ever make any search or inquiry after this woman. Then, gentlemen, the next witness, in point of time, is *Mrs Connaway*. She describes her house as adjoining to that of *Burke*, and says, that early in the forenoon of the same day, she saw *Burke* enter his house, followed by a woman, immediately behind him. *Mrs Connaway* had occasion to go into *Burke's* house in the course of the day, when she saw this woman in company with *Burke* and *M'Dougal*, she returned again in the same evening, where she saw the same woman washing her clothes, and had a conversation with her,—she describes her, in point of appearance, dress, and every other respect, in such a way, as to leave no doubt that she was the same individual who came from *Mrs Stewart's* in the morning. She was then the worse of drink, and *Connaway* advised her not to go out, lest she should be taken up by the police, on that account. She followed *Connaway* into her house, where she insists that *Burke's* name is *Docherty*, and gives as the reason, that that was the name he had given himself to her. They are then joined by *M'Dougal*, *Hare*, and his wife. Spirits are produced, and drank. They all became merry, and were dancing and singing. All the party then quit *Connaway's* house, excepting *Docherty*, who remained there till

Burke and Hare.

Lord Advocate

between ten and eleven o'clock, when seeing Burke going into his house, she follows him Connoway then gives an account of a disturbance in Burke's house, which prevented her sleeping The next witness, Mrs. Law, confirms Mrs Connoway's statement, and says, that in the disturbance which took place in Burke's house, she heard Burke's voice,—thus proving that he was at that moment in his house The next evidence in point of time, is a person of the name of Alston —He lives, it appears, in the first flat of the house from the street, or the second storey above Burke's house. and he states, that he was alarmed by the noise which he heard issuing from Burke's house, about half-past 11 o'clock of the same night,—that he went down to the entry where Burke lived, and there he heard two men fighting, and a woman calling murder, but not as if she was in imminent danger. He says, that after standing for a minute or two within three yards of Burke's door, he heard something give a cry, as if it was strangled He could hardly distinguish if it was that of a human being, or of an animal. This description of the noise heard, leaves little doubt, but that, at that moment, Docherty was suffering by strangulation It is most singular that Alston should have come home on this evening at *half-past eleven* at night, at which time, no doubt, this dreadful act of murder was committed. Alston then goes for the police, but not seeing a watchman, he returns to the entry, by which time, the tumult had subsided, and he went home The next evidence to which I shall allude, is a very short testimony, but one which goes to establish a matter of great importance, I mean that of the sister of David Paterson.—She tells you that Burke came to her mother's house that night at 10 o'clock, asking for her brother At this time, M'Dougal, Hare, and his wife, were all in Connoway's, Burke alone was absent Now, it is our business to inquire where he was during this interval, and why he went to Mr. Paterson's You will observe, that David Paterson is an assistant to Dr. Knox, and it is in evidence that he and Burke had had frequent dealings respecting dead bodies; it cannot, therefore, be difficult to conceive why Burke wished to see Paterson that night, when he foresaw that he should so soon have a body to dispose of If this was his object, you will readily see, that by going in search of this person at 10 o'clock, when Docherty was still alive, he demonstrated his predetermined purpose to put her to death This is rendered more apparent by what follows —Alston hears the sound of strangulation at half past 11 o'clock; and the next witness, namely, the said David Paterson, swears that he came home at 12 o'clock at night. He tells you expressly the hour when he reached his own house,—and when he was entering it, he found Burke knocking at the door, wishing to see him; so that there can be no doubt but that the moment after the frightful deed was committed, he left his own house and went to that of the witness. He then asked Paterson to go with him to his house He accompanied him accordingly, and the distance being short, he reached the house nearly at 12 o'clock at night,—when this woman, who was well and dancing in Mrs Connoway's an hour before, was not visible He told you, that he saw there two men and two women; and further, he told you, what was confirmed by other evidence, that Burke pointed to the corner where the straw was, and said, "there lies a subject for the doctor to-morrow." These emphatic words will not escape you,

Addresses to Jury.

Lord Advocate

nor the moment when they were spoken, nor the person to whom they were addressed. They prove not merely the time of the murder, but the base purpose for which it was perpetrated, namely, to obtain the sum of £8 or £10, as the price of the body. It is quite horrifying to think that human beings could be found willing to commit deliberate assassination for such a bribe. The next witness examined was the lad Brogan, whose testimony is of little importance, unless to show the total indifference felt by the prisoners, in consequence of what had been so transacted. He tells you that he came into Burke's house about two in the morning, and that he and the prisoners, and Hare and his wife, slept quietly, as if nothing had happened, and thus, while Docherty's dead body, though unknown to Brogan, was lying within a few feet of the spot where the party was reposing. Next follow two very important witnesses, Mr and Mrs. Gray, who were lodgers in Burke's house.—They had lodged there for some time, and would have remained there that night, but Burke continued to get them out of the way, by procuring a bed for them elsewhere. It is proved that no cause existed, or could be assigned, for this removal, and, accordingly, instead of allowing them to find accommodation for themselves, Burke went himself and procured a room for them, and met them next morning, and with much civility agreed to pay for their night's lodgings. This is a point of material consequence in this case. But can it be necessary to ask why it was requisite that these persons were not to sleep in Burke's house during that one night? Is it not apparent that the object was to prevent their seeing, and doubtless preventing, the horrid deed. But, can anything more clearly demonstrate predetermination on the part of this prisoner to commit the crime of which he is here charged? These witnesses mentioned, farther, that Burke called up in the evening, obviously to see that they were safely housed, and he invited them, next morning, to come down and breakfast with him. They described also what took place on this occasion; that Mrs. Docherty was not to be seen; that spirits were thrown over the room, evidently with a view to absorb the smell that might naturally be expected to arise from the dead body, that the spirits were thrown particularly under the bed, and on the place where the body lay. These persons very naturally asked what had become of the old woman. You, gentlemen, will recollect the answer they received from M'Dougal, viz., that she had been too familiar with William, and that she had kicked her out of doors the preceding night, using, at the same time, epithets, which it is unnecessary for me to repeat. You next see Burke's attempts to prevent Mrs. Gray approaching the spot where the body lay; and that woman afterwards discovering it, to her utter horror, stripped naked, and lying among the straw. She calls on her husband, and the neighbours, Mrs. Law and Connaway, who are no less horrified than herself; and all these persons identify the body as being that of Docherty. By the witnesses who follow, it is proved, that in the course of the afternoon this body was put into the box now standing before you, which had that day been bought by Burke from Mr. Rymier, brought part of the way by Mrs. Hare, and then by M'Culloch, who assisted Burke and Hare in forcing the body into the box. The box is then carried to Surgeons' Square, and is deposited in the cellar,—and these individuals proceeding to Newington, obtained the price they expected, viz., £5 paid down, with the promise of

Burke and Hare.

Lord Advocate

the like sum to be paid the following Monday Gray, in the meantime, gives information to the police,—means are taken to recover the body, which is carried to the Police-Office, where it was recognized by Mrs Law, and a number of other witnesses, as the body of Docherty. Now, gentlemen, besides this evidence, we have two *socii criminis*, who witnessed this act. Hare and his wife detail all the shocking particulars of this sad tragedy. From them it appears, that early in the day, Burke told Hare that he had got a shot for the doctors in his house, and sent him down to administer spirits to the woman Hare then recites the events of the evening,—the individuals present,—the actual, or rather pretended quarrel,—the overturn of Docherty in the course of it,—and this almost at the moment when she attempted to interfere in behalf of Burke, saying he had been kind to her. Next follows the hideous act of this man Burke throwing himself on the body of Docherty, and, like a tiger, catching at her throat, mouth, and nose, and then holding her, while in the agonies of death, for nearly fifteen minutes After all, it is supposed that life was not extinct The same diabolical means are therefore renewed, and the purpose being at last accomplished, she is doubled up, and thrown into the straw, in a corner of the room Such details are enough to freeze one's blood, and excite our wonder that such monsters in human form should be found in existence

Such is the summary of the evidence which has been led,—but it is necessary to look at it more closely, so as to see whether it establishes the two essential points requisite in all such cases, namely,—1 That a murder has been perpetrated,—2 That the prisoners were the individuals who committed that crime

On the former of these points, the state of the body is first to be attended to In general, that alone decides whether a murder has or has not been committed. If a man is killed by a blow, this, in general, is demonstrated by a fractured skull, or by some other violent contusion. If he is poisoned, the contents, and state of the stomach, establish the fact. If stabbed, the wound shows the cause of death But here, the perpetrators were men of science, who seem to have known how to commit murder, without its being visible on the body By shutting up the mouth and nostrils, and by pressure on the chest, it appears that an individual, when in a state of intoxication, may be easily deprived of life, without any certain mark remaining to explain the cause The medical gentlemen have told you, that they could go no farther than to say, that, in their opinion, it was most probable that this woman died of suffocation The fact of the murder, thus comes to be a question, which you must decide from the whole evidence before you It will be kept in mind, that this woman is proved to have been in perfect health before, and on the day on which she died. She was well when she left Mrs Stewart's in the morning, and she was dancing and singing in Connaway's house down nearly to 11 o'clock in the evening, when she followed Burke into the house, and she was dead before 12 o'clock of the same night Added to the sudden nature of this death, you have the fact, that the body, on examination, exhibited internally every proof of health. That no apparent cause of death could be *there* discovered, while the countenance was livid,—the eyes suffused,—the throat ruffled,—a quantity of blood mixed with saliva issuing from the mouth, and,

Addresses to Jury.

Lord Advocate

in short, every appearance that could denote strangulation You find Dr. Christison swearing, that if she was smothered by Burke, in the manner described by the witnesses, the appearance of the body entirely corresponded with what such an act would have produced, and although Mr Black says, that from the appearance of the body at the Police-Office, he could not have ventured to say positively that the deceased had been strangled, he swears, that if he had found the body lying with the blood and saliva issuing from the mouth, as when it lay on the straw, he would have had no doubt on the subject. Such facts, and such opinions, I confidently submit, ought to leave no reasonable doubt in your mind as to the cause of death. But if your minds can be supposed to hesitate on that point, look only to the evidence of the two witnesses, Hare and his wife, who saw the deed committed. I will fairly confess, that I had much reluctance in admitting either of these persons to give evidence for the Crown, and I will openly state my reasons for doing so. In the *first* place, whatever might be my own opinion, I could not be certain that a Jury would hold the circumstances which I have just stated, as amounting to complete proof of the *corpus delicti*, or act of murder. I could not shut my eyes to the doubts expressed by the medical men as to the cause of death,—doubts which were more strongly expressed in the first stages of these inquiries, than they have been stated this day. I could not forget that it was *possible* that this woman might, as in the instances mentioned by Mr Black, have died from the effects of intoxication, or might have been killed in the course of the affray that then took place, in which case, the crime would not have amounted to murder, but only to culpable homicide. These things being possible, I knew how strongly the eloquence of counsel would press upon a Jury their bounden duty, to take the most favourable presumption for the prisoners, and either to acquit or to find the lesser crime proved. Be it remembered, that at that time, nothing was known of any other murders, and that we were dealing alone with that of Docherty, and that of the four prisoners concerned in the deed, not one of them, after being kept for weeks in prison, and being repeatedly under examination, would admit any participation in the crime. Let me ask, if in such circumstances, I was entitled to hold, with certainty, that a Jury would doom four persons to a capital punishment? In the course of the trial, and still more if an acquittal had followed, would I not, in such circumstances, have been taunted with a failure of duty, in not admitting some of these prisoners to give evidence, so as the certainty of the murder might be established, and the Jury and the country made to know how, and by what individual, it was committed? In a case where I deemed it of the last importance that an example should be afforded, I did not conceive myself warranted to risk a trial without such evidence; and I am persuaded, that those who will place themselves in any situation, will not say that they would have acted otherwise. It is thought the women ought to have been selected, I answer, that they both positively refused to say a word on the subject, and at any rate, from their respective connections with the men as then understood, and still believed, they could not have given testimony against them. But I will own that I had another, and a no less forcible reason. I must remind you, that though there were rumours and suspicions abroad, there was then no certainty of any other

Burke and Hare.

Lord Advocate

crime excepting that connected with Docherty. Had a trial taken place under such circumstances, and the parties been acquitted, it was obvious that they would have returned to their former practices, whatever they were, with increased encouragement and confidence, from such a result,—or suppose that they had even been convicted in Docherty's case, that would doubtless have led to the punishment of these offenders. But in what state would it have left the magisterial functionaries? They would have remained entirely ignorant at this moment, of the extent to which such crimes had been carried by these persons, whether these four individuals comprehend the whole gang, or if there were others connected with them, or whether similar gangs did not exist in other places. Such a state of ignorance appeared to me altogether inconsistent with the security of the public. I considered a knowledge of these matters indispensable, and as being of infinitely more public importance, than any punishment which could be inflicted on those offenders. I did not think then, nor do I now, that such information was too dearly purchased, by admitting some of these individuals to give evidence, and I am persuaded that the country, when this matter comes to be calmly considered, will support me in the propriety of the choice I so made. Such being one main object, need I say that a mere disclosure of the circumstances connected with Docherty's case, could not suffice. It was indispensable that these individuals should tell all they knew in regard to every other crime in which they had been concerned, along with the prisoners, as also, in regard to any person who might be accessory to deeds of the kind. Such disclosures, Hare accordingly made, and from the information so furnished, the two other crimes stated in the libel, which otherwise would have never been rendered certain, or have made their appearance in a Court of Law, have been brought to light, in such a way as to warrant my preferring them as substantive charges against the prisoners. Of the other information given, the Magistrates now have the advantage, and the public will reap the full benefit. I need hardly say, that by availing myself of such information, I necessarily excluded the possibility of bringing these witnesses to trial, for any offence in which they so acknowledged a participation. In the present state of excited feeling, the justice of this may not be felt, but in moments of excitement, firmness, and the exercise of sound discretion, are peculiarly called for. And sure I am, that if I was to take advantage of disclosures so made, and to bring Hare to trial for any of the crimes he so confessed, such conduct would not only be openly exposed by the bar, but would deservedly call down the censure of the Bench, and of the jury, aye, and of the public at large, when they came to think coolly on the subject, and should look to the consequences to which such a proceeding might in future lead. It is naturally revolting to see such criminals escape even the punishment of human laws, but this must be borne, in order to avoid greater evils, and it may form some consolation to reflect, that such an example of treachery, by a *socius criminis*, must tend to excite universal distrust among men concerned in similar crimes, if any such should hereafter exist. Fortunately for the safety of life, a crime of this nature cannot, in all its details, be accomplished without assistance, and nothing can be more calculated to deter men from its commission, than the probability of the perpetrators readily betraying each other.

Addresses to Jury.

Lord Advocate

I have gone into this detail, not only in my own justification, but to show you that these witnesses were in perfect freedom to give their evidence, and had no inducement to say anything but the truth. I should indeed have blushed to have put them into that box to bear evidence against those prisoners, under *any* feeling that their own trial and punishment might depend on the nature of the testimony which they were to give.

At the same time, I do not present these persons to you as unexceptionable witnesses. Assuredly they are great criminals, but the law has said that their testimony is admissible, and thus pronounced it not undeserving of all credit. It is for you to judge of the degree of credit to which they are entitled. You saw them examined, and will draw your own conclusions. I may be prejudiced, but to me it did appear, that while the evidence of the wife was on many points exceptionable, Hare himself spoke the truth. Notwithstanding all the ability shown in the cross-examination, I do not recollect one particular on which he was led to contradict himself, or state what must be false. Doubtless, there exist inconsistencies betwixt his evidence, and that of his wife, but these are not of a nature that ought to induce you to withhold all credit from their testimony. The points of difference regard immaterial particulars of small moment, as to whether the same individual was sitting or standing at the time, or lying on the bed, or going out into the passage, a difference on this point, ought not to vitiate evidence. Your own experience will tell you how difficult it is to find two individuals, who, however disposed to speak the truth, will concur in such particulars, in regard to an interview which occurred at the distance of two months. But look to the situation in which these persons were placed. Look to the size of the apartment in which all this occurred. Recollect that all present are proved to have been nearly intoxicated at the time, and remember, that an act of foul murder was then committing. Is it possible that they should not have been in a state of unusual excitement and alarm at the time, and is it wonderful that their memories should have served them differently, in regard to such trifling particulars as those to which I have alluded? If they had been at one on all these points, the only just inference would have been, that the story had been entirely made up between them, and their evidence, in consequence, not entitled to any credit. But look to the main part of the case, the murder, and the mode in which it was done. That was a fact sufficient to rivet attention, and to render sober any one, however inebriated. On this material point, you find these witnesses entirely concurring, both describing the same mode of death, and both describing a mode which corresponds completely with the appearance of the body, and which, in the opinion of the medical men, satisfactorily accounts for the death. That both Burke and Hare were participant in this foul act, no one can doubt. And I need not state to you, that it matters not which was the principal aggressor in its execution. They are both, art and part, guilty of murder.

If, then, you believe that the act was so perpetrated, there is an end of the case. The murder itself is proved, and it is rendered unquestionable, that it was committed by the prisoner's hands. But do I ask you to believe the testimony of these witnesses unsupported,—far from it. Look again to the facts proved by other testimony, to which I have already alluded,

Burke and Hare.

Lord Advocate

all tending to confirm the statements of these persons, and showing that Burke, from first to last, was the leading instrument in this horrid deed. Call to mind Burke's first meeting Docherty in the morning, and seducing her to his house, under pretence of relationship, or that he bore the name of Docherty, which the poor woman insisted with Mrs Connoway was his real name,—his accompanying her home, and being seen by Connoway entering his own house along with her,—his insisting on Gray and his wife sleeping in another house for *that night*, and his paying for their bed, thus fixing the time of the premeditated act, and choosing his own house as the spot where it was to be committed,—his going in search of Paterson, before the murder was perpetrated, obviously with the view of transacting for the body,—his again going for Paterson immediately after the deed, and bringing him to the spot, and pointing to the straw, saying, there is something for the doctors to-morrow,—all these, as proved by unexceptionable evidence, were the acts of Burke alone, unaided by Hare —his treatise next day as to selling the body at Surgeons' Square,—his providing the box, into which it was to be carried,—procuring and paying the porter who carried it,—and then proceeding to Dr Knox's premises with it, and getting payment of part of the price. These facts all tend to confirm the testimony of the Hares, and they remove every degree of doubt as to the prisoner's guilt, and present this man as the premeditated author, and leading instrument, in the perpetration of this most hideous act. Then we have the evidence of Mr Alston, who, by the interference of Providence, appears to have come to the spot at the very moment. Doubtless, a discrepancy exists between his evidence and that of the Hares, as to the calls of murder; and a doubt arises by whom these were made. My own impression is, that these cries came from the women when in the passage, incapable to resist the feelings which such a scene produced. But in whatever way that is viewed, most obvious it is, that Mr. Alston's evidence confirms that of the Hares, as to the act of strangulation being committed at that very moment, within half an hour after Docherty had been seen in good health leaving Connoway's house, and accompanying Burke into his, and within the like time before the body was pointed out by Burke to Paterson as a corpse. That Burke was present when that deed was thus performing, is proved altogether independently of the Hares. He was seen by Mrs Connoway going into his house within half an hour before. Mr Alston expressly says, that he heard Burke's voice in the house at the time to which he speaks, and Mrs Law, on being asked if she could distinguish any persons' voices in the course of the affray, says, she was not sensible of any person's voice but Burke's. In addition to this, you see that immediately after the deed, he calls in Paterson, and expressed himself in a way that showed his knowledge of what had been transacted, and, in his second declaration, Burke unqualifiedly admits his presence during the whole scene. In the first declaration, he, indeed, tells a story entirely false from beginning to end,—a proceeding not very indicative of innocence; but, in the second declaration, he confirms Hare, not only as to his own presence, but in all the important particulars which occurred; excepting always as to the cause of death, which he describes as proceeding from suffocation, by Docherty having fallen amongst the straw. But even here,

Addresses to Jury.

Lord Advocate

he renders his assertion unavailing, for instead of her face being pressed down, so as to lead to suffocation, he says,—“they found her among the straw, lying against the wall, partly *on her back*, and partly on her side. That her *face was turned up*,—and there was something of the nature of vomiting coming from her mouth, but it was not bloody.”

I shall not detain you longer with the case of Burke, and shall only say, that if this mass of direct and circumstantial evidence, applicable to an occult crime of this description, shall not convince you of the guilt of this prisoner, the situation of the prosecutor, or rather of the country, will be most deplorable. Is it to be supposed, that such offenders can be so insane as to commit murder in the presence of unexceptionable witnesses, or can we suppose that such witnesses would stand by and see the deed done, in order, afterwards, to give evidence against the perpetrators? Unless this is to be declared indispensable, I do not in my conscience see how more proof could be afforded than what here occurs, and should this be held insufficient, I see no other result, but that this frightful crime must, in future, go unpunished.

It remains for me to say a few words as to the case of M'Dougal. She is here charged, in our law language, as guilty, art and part, of this murder, in other words, that she was accessory to it. It was my intention to have read some passages from our law-books, to show what is there held to amount to such accession, but at this late hour, I avoid doing so, the more especially, as any intelligent mind can, without such light, be at no loss on this subject. By accession, is meant a person being cognizant of, and a party to a murder, although the act of slaughter is not the immediate act of his own hand. Such accession may arise from acts done previous to the deed, during its commission, or even after its completion. In the present instance, the prisoner, M'Dougal, was an accessory to Docherty's murder, in each and all of these respects.—1. She was aware of Burke's intention to commit the crime, and she not only took no means to prevent it, but aided the enterprise, by alluring and detaining the woman in the fatal den, until the deed was done. You will observe that she saw Burke bring to his house, as a lodger, a woman in the situation of a beggar,—a woman who had not a farthing in the world,—and to whom he was pretending to be related, and to bear the same name, and whom he proposed to furnish with board and entertainment for a week;—she saw him turn out of his house, in order to make way for this woman, two persons who had been previously lodging in his house. This she saw arranged not for a whole week, during which Docherty calculated upon remaining there, but for *one night* only, and for this night's lodging Burke was to pay the charge. Is it possible that M'Dougal could see all these things, supposing her to have seen and known nothing more, and not to have drawn the conclusion that something serious was intended? But the matter is not left to inference,—she not only drew the conclusion, but she ascertained the fact; for in the course of the forenoon, she told Mrs. Hare that there was a *shot* in Burke's house. The meaning of that ominous term has been explained to you. It imported a person intended to be murdered, and the body to be sold for dissection. There cannot be a doubt, but that M'Dougal so understood the term at the time, and that she intended to convey that meaning to Mrs.

Burke and Hare.

Lord Advocate

Hare. Thus, is she proved to have previously known of the intended murderous act, and what did she do? Did she fly from the murderous scene, as she might at once have done, being united to Burke by no tie which she could consider binding, or having resolved to remain, did she do anything to prevent the murder? Did she avail herself of the many opportunities of Burke's absence, to advise this poor woman to depart during the course of the day? No, she treated her kindly, set her to work in washing her clothes, and did not fail to administer to her the modicum of whisky, as Mrs Connoway says, that she found her the worse of drink when she went into Burke's house in the evening, and when Docherty accompanied Connoway into her house. In this last house, a scene takes place, which illustrates the feelings of these persons, knowing, as they then did, what was about to be acted. You see a bottle of spirits produced, of which they all joyously partake, and M'Dougal and the two Hares together, with this poor woman, set a-dancing and singing, and enjoying every kind of merriment. Can such proceedings be considered in any other light, but as means for decoying the victim into the snare, and making her fall the easier, by the state of inebriety into which she was thus led? And if you believe these facts, am I not entitled to ask, if they were not all of a nature calculated to give effectual aid to the preconcerted deed, and whether they do not of themselves constitute an accession to this crime? At length, Burke arrives, accompanied by Docherty, the pretended affray then ensues, in the course of which, if you believe Hare, Docherty twice attempted to make her escape, and was twice brought back by M'Dougal. If this fact be true, it is of itself decisive, not merely of this woman's accession to the deed, but almost of her participation in the foul act just then to be accomplished. So much for what took place *before* the murder: next, for the moment of its commission. Beyond all doubt, M'Dougal was present and witnessed the deed; and it is no less certain that she did nothing to prevent it. True, she did not lend a hand in aid of the act; but her presence on such an occasion, when nothing is done to help the sufferer, is substantially an assistance. It encourages the murderer. It adds to the terror, confusion, and danger of the deceased. You see it proved, that when Burke and Hare were engaged in combat, M'Dougal and Mrs. Hare scrupled not to expose themselves to injury, by interposing to separate those drunk men when so employed. But when, in a few minutes after, this frail creature, one of their own sex, who had been seduced into that house under a show of hospitality, was meeting her death under the hands of the murderer, Burke,—for whose safety a moment before, she, poor thing, had expressed an anxious wish, for Burke's safety,—not a finger was moved, or an attempt made by either of these females to prevent this inhuman sacrifice, or to rescue the victim from the hands of the assassin. It is said, that unable to bear the sight, they ran into the inner passage, the outer door of which was shut, and there they stood quietly till the deed was completed. But why did they so stand? Why did they not call upon the neighbours? Mrs Connoway's house was within two yards of them; Mrs Law's, little farther; and yet no help was asked from them. Had they but opened the door, they would have found Mr Alston at that moment in the passage, and all might have been well. In such circum-

Addresses to Jury.

Lord Advocate

stances, it is difficult to give these women credit for their pretended feeling, and not doubt whether the true purpose of their taking up their position in the passage, was not of a very different nature, and that the real object of what they so did, was to prevent intrusion, and to give notice if any such should be threatened. But if we are to talk of the feelings of these women, let us look to their subsequent conduct. They return quietly into the house, lay themselves down within a few feet of the murdered body, and there go soundly to sleep for the night. Had these women not been prepared for the act,—had the murder come upon them unknown and unexpected,—is it in nature, that such could have been their conduct? Could sleep, for an instant, have closed the eyes of an innocent woman, or could she have enjoyed one moment's rest, after witnessing such a tragedy, and when she knew that the mortal remains of the murdered woman were, at the moment, within reach of her hand? Such circumstances afford *real* evidence of knowledge and accession to the crime, and no evidence ought to be so satisfactory to a jury as proof of that description. Then, in what state is the prisoner M'Dougal next morning? She commences with entertaining her company by singing them a song, as sworn to by Mrs Connoway, at a time when she must have been sitting within a few feet of the dead body; and when asked what had become of the old woman, she, in terms the most unfeeling, and language so coarse as forbids my repeating, tells a most gross falsehood as to Docherty's behaviour, and as to her having turned her from the house the preceding night. Thus, she endeavours to conceal the murder, and protect the murderer,—facts which of themselves have even been held to constitute an accession to the deed. But she does not stop here,—she endeavours to bribe Gray and his wife to secrecy, and recollect, I pray you, the nature of the bribe,—£10 per week—a truly enormous sum, recollecting the price immediately paid for the bodies destined for dissection. These witnesses ought, while they live, to thank God for giving them strength to resist the temptation. Had it been otherwise, not only would this crime have gone unpunished, but, who can say but that the hands of these persons might not, ere now, again have been imbrued in human blood. Strange as it must appear, that refusal seems to have made little impression on M'Dougal; as you find her and Mrs Hare proceeding, first to Surgeons' Square, and then to Newington, on pretence of preventing their husbands quarrelling,—a thing not unlikely at that moment, but, in reality, to look after the price to be got for this body, and to take care that they had a share of the booty. I know that the address of my learned friend will lead him to separate those facts, and, by taking them one by one, to show that each, when viewed alone, is not sufficient to constitute accession. But this is not the legitimate mode of dealing with circumstantial proof. The whole facts ought to be taken together; and, viewing them in that combined aspect, I humbly conceive that no reasonable doubt can exist as to the accession of this woman to the crime in question.

I now hasten to a conclusion, and fear that, at this late hour, I have detained you too long, for which the anxiety I feel, in regard to this important case, must be my excuse. I now leave it in your hands, under the perfect confidence of a satisfactory result. I know that you are

Burke and Hare.

Lord Advocate

incapable of giving way to any prejudice injurious to the accused; but I am also persuaded that you possess firmness sufficient to do your duty,—that you will not shrink from it from the apprehension that your motives may be questioned. You have doubtless an important duty to perform to these prisoners, but you owe one no less sacred to the security of the lives of the inhabitants of this city. And without saying more, I now conclude the long, anxious, and painful duty which I have had to perform, from the day when this crime was committed, down to the present hour, by demanding at your hands, in the name of the country, a verdict of guilty against both these prisoners at the bar

The Dean of Faculty's Address to the Jury.

The DEAN OF FACULTY—*My Lord Justice-Clerk, may it please your Lordship—Gentlemen of the Jury*—I cannot but very much lament that you should be called upon to listen to me in addressing you on the part of the prisoner, after so many hours of fatigue as you have already undergone, in attending to the great extent of matter into which this trial has run. We have been sitting here, gentlemen, about seventeen hours, in the course of which, with the exception of the discussion of the question of form, you have been listening to the case of the prosecutor. But when you consider that the lives of these prisoners are in your hands, I am sure I need say nothing more to entitle me to your utmost indulgence, while I submit to you the observations which appear to me to be material in behalf of the prisoner Burke, oppressive as I fear it may be to you to hear me, and oppressive to myself to speak to you on the many details which the evidence embraces. In one observation which was made by my right honourable and learned friend I entirely concur that if this case is proved, it is a case of the greatest atrocity. Of that there can be no manner of doubt. But, gentlemen, the inference I apprehend is not to be readily drawn, that because it is a case of atrocity, we are, in trying the guilt alleged against the prisoner, to be satisfied with anything short of clear legal evidence, or are to proceed on mere suppositions, or on that which may amount to no more than mere probability. All the principles of law and justice lead to an opposite inference. Gentlemen, this case may be represented as anomalous and unprecedented in some views of it, but I must beg your attention in the very outset, to this plain view of the matter, that the thing of which this prisoner is accused, is simply and singly *murder*. There is no aggravation, and no other crime or offence charged; and, when therefore it is supposed that this case is of an extraordinary or unprecedented nature, this can only refer to the motive by which it is said the prisoners were actuated in committing the murder. But what does that amount to, but that the motive was a miserable *gain*? There is surely nothing anomalous or unprecedented in this. A vast proportion of the murders of which we hear are committed from the same motive of *gain*—to conceal robbery, or escape in housebreaking. And what difference does it make on the crime of *wilful murder*, whether the motive be to rob a man of his watch or a few shillings, or to sell his body for a few pounds?

Addresses to Jury.

Dean of Faculty

The crime is still the same, and it is neither less nor more than wilful murder in either case. Other motives may also exist, such as violation or the concealment of it, and the like causes by which the evil passions of human nature may be directed. But, whatever is the motive, if there be no other crime charged, it is still with the case of wilful murder alone which a jury have to deal, and the single question for their consideration is, whether there is legal evidence or not that the prisoner has been guilty of *the murder* charged against him. The case, notwithstanding, which you gentlemen have to try, is somewhat unprecedented in its nature and character, in a manner which I apprehend requires your most careful attention. The motive for committing the offence which is here ascribed to the prisoner involves in it a peculiar practice or employment which may be in itself a crime, though it is not necessarily criminal, but whether it implies public criminality or not, it involves in it a purpose which is revolting to the feelings of the generality of mankind, and calculated, almost above every other thing, to produce a prejudice in the minds of those that come to consider of the case itself. For, gentlemen, need I say that, when it is imputed to the prisoner that his object was to procure what they are pleased to call subjects for dissection, the very statement of such an object, or such an occupation, stamps a degree of infamy on the individual engaged in it, and you are apt to set it down in the very commencement of the inquiry, that he is a person capable of any turpitude, and to imagine that to prove *him* guilty of any crime, however enormous, requires less evidence than that which you would consider indispensable to the conviction of any other person. The subject of this trial is, besides, one which is universally felt, and has been universally talked of as a matter of horror and detestation, and we come into Court this day upon a charge of wilful murder, with this dreadful source of prejudice stamped on the face of the indictment, with the intent or motive so anxiously set forth in it. I do not know for what reason or purpose it is thus exhibited; but it evidently has the effect of exciting this feeling of prejudice far beyond its legitimate effect, as necessarily involved in a part of the evidence by which the charge is supported. Gentlemen, I point out this to you, in order to press on you the more than ordinary importance in this case of divesting yourselves of all extraneous impressions, and fixing your understandings and your consciences singly on the proper matter of such a trial. I do not doubt the sincerity of my friends in telling you, that they have put the case in the form which appeared to them the best calculated for bringing out the fair merits of the case. I only say, that it demands of the jury more care and caution to distinguish the just impression of the evidence from the impressions inevitably produced by the mere exhibition of the charge itself. I must yet farther observe, that the indictment still before you charges the prisoner with no less than three such acts of murder, at different times and different places, and, of course, on the persons of different individuals. Now, gentlemen, that also tends to increase the feelings of prejudice, because it is calculated to produce an impression, not only that this man had been engaged in that trade of furnishing anatomists with subjects, but that he has been in the habitual practice of committing murder for that end. I do not enlarge on this, because enough was said on it in an

Burke and Hare.

Dean of Faculty

early part of the day But, though you are now bound to confine your attention to the single charge of the murder of Margery Campbell or Docherty, the indictment is still before you which charges the prisoner with two other murders with a similar intent, and it is impossible to prevent the impressions which this must inevitably produce The great difficulty, therefore, which you have to encounter in this case, is to separate in your minds that which truly is matter of evidence before you from grounds of belief or suspicion received from other sources—from common talk—from newspapers—from handbills industriously circulated, though no doubt reprobated by my learned friends, and all the persons connected with these proceedings It is a delicate and a difficult task But it is indispensable to the fair course of justice and I trust, therefore, that you will meet it with firmness, and throw aside all such impressions, while you come with me calmly to the consideration of the proper case upon evidence alone.

Gentlemen, I need not tell you, that to prove wilful murder against any man requires clear proof. The more atrocious any crime charged appears to be in its circumstances, the jury will require the clearer proof before they find an individual guilty of it You all know that this is a principle of law it is a principle of reason and common sense It is the acknowledged principle of the law of this country, which runs through all its branches The highest crime which a man can commit is the crime of high treason, the compassing or imagining the death of the king, the *murder of the king* That is the highest crime known to the law; and what does the law of this country provide in that case? It covers the person accused all over with the protection of the law It gives him privileges which are not enjoyed, or not universally enjoyed, in any other case It requires more proof to warrant a conviction than would suffice in any lower offence. When, therefore, my learned friend says that this is a most atrocious case if proved, he gives you a rule and principle of judgment, universally recognised by the law, that the facts proved must establish the crime and guilt of the prisoner in the very clearest manner Now, gentlemen, the first matter of fact to which I direct your attention is completely fixed in this case Though I am aware that it is calculated deeply to injure the prisoner, if he were to be tried by prejudice, it is still a fact, which, in the case, as it truly depends on evidence, is of the greatest importance in his favour. That fact is, that this man has been employed in the business or trade, as it may be called, of procuring or furnishing subjects for dissection Gentlemen, though that circumstance may excite feelings of prejudice and disgust, divest yourselves of such feelings, and you will then see in an instant, that it is a most important fact in favour of the prisoner, in considering the whole evidence in this case For, in the *first* place, on that fact I am entitled to say to you that there is nothing wonderful, nothing extraordinary, and nothing to afford the least shadow of a presumption of murder in the circumstance of a dead body being found in this man's house or possession If you had found a dead body in the house of another person who had never been so engaged, who could give no explanation why it was there, or for what purpose he so had it in his possession, the natural inference would be, if the person was seen alive recently before, and found dead in his house afterwards, that a murder had been committed, and that

Addresses to Jury.

Dean of Faculty

he was the murderer But when you attend to the condition of this man, the finding of a dead body in his house proves nothing at all against him, in the proper charge of murder According to the account that is given you by Paterson, and it could be supported by other evidence, it was this man's trade, in which he was constantly employed by Dr Knox and others, to procure and sell dead bodies perhaps we may say that it was his daily occupation, and every week you might have found such a thing in his custody in one form or another It may indeed be a fact of importance if you have other evidence tending to prove the fact of murder But by itself, and viewed only in its first aspect, it affords no evidence, and no presumption of murder —The fact of the prisoner's trade, be it lawful or not, entitles me to say that the mere fact of the body of this woman being found in the house of William Burke, is no evidence, even to *presume*, that he had murdered her, because it admits of a clear explanation, consistent with innocence, from the daily traffic in which he was engaged. Then, gentlemen, in the *second* place, you will be pleased to observe how that matter bears in another way When you find it proved, that this man was engaged in an employment, which is considered infamous, and which may and generally does involve a crime of a different nature, you see manifest danger to him from the discovery that he is so engaged There is danger to his person from popular feeling independent of the law—danger of his being beset in his dwelling—danger of his being attacked in the streets. and thus you have a reasonable and true account at once of all the anxiety he may have shown to conceal the fact of such a thing being in his possession or within his house Whether he had procured this subject legally or illegally, he was equally in danger, if it came to be known, consequently it is clear that he had motives for *concealment*, and motives for *false* attempts at explanations, altogether distinct and separate from the supposition that he was conscious of having committed murder If you will permit yourselves for a moment to separate this matter from any other evidence in the case, which may seem to bear on the charge of murder, you will see at once, how totally insufficient it is to afford any proof of that charge. If there were no evidence as to the manner in which this woman came into the prisoner's house, or of the circumstances which took place there, the mere fact of his having concealed the body or having given false statements to prevent its being discovered—the wavering and inconsistent accounts which he might give after discovery—nay, even inducements held out to prevent disclosure—all such things would admit of the easiest explanation from the fact that he was engaged in such trade and that there was a plain motive for all of them, independent of any supposition of his having committed murder. Now, gentlemen, there is a *third* observation I have to make as arising from this matter of fact Gentlemen, I am not standing here to defend the character of William Burke. I will not do so. I have too much respect for your understanding, and my own profession to do so. But after you see what sort of a man he is, and how he is situated, I say, gentlemen, the mere fact of his taking and keeping the body of the person, and using it in a particular manner, after the person had come to death, either by an accidental fall or by violence, not inferring murder, or even by the wilful act of some person, would by no means afford any-

Burke and Hare.

Dean of Faculty

thing like conclusive evidence, that he was either the murderer or a wilful partaker in the murder. The supposition is perfectly reconcilable with the contrary idea. You have evidence that Burke and Hare acted together in this trade of procuring subjects for dissection, though William Hare, with his usual adherence to truth, chooses to deny this unquestionable fact. You have it proved by Paterson. Now, I put the case to you, that this woman died by intoxication or by accident, or that she was killed in a fray, or killed on a sudden impulse, by this William Hare, without premeditation, or at any rate, without preconcert with Burke, and that *afterwards*, Burke having no *previous* participation, was willing, or was prevailed on to join in making booty of the subject. You may condemn him if you please—you may say he is destitute of common feeling, if you like, but the question would be, could it be necessarily inferred that he had committed the murder charged? He is not under trial for procuring subjects for anatomists, you see, then, on the whole, the situation in which this man was placed, and that he was in a situation which will account for a variety of circumstances, which, in another case, might be of the most conclusive nature.

Gentlemen, I wish to make one more observation of a general nature. You have it proved that all those persons who were in any way connected with this affair, are of the most irregular and dissipated habits, I do not mean Mr Alston, or the other respectable persons that were examined, but the Burkes and the Hares, the Grays, and the Connaways, &c., appear to be persons of very irregular habits. You find them drinking ardent spirits morning, noon, and night of the same day, to a great extent, and, gentlemen, when you find evidence of such habits as are here proved, in all the persons who are found in contact with the scene of action; and when you then discover, by good evidence, that there was a violent fighting, a complete riot, within the walls of that place where the woman is said to have met her death—Gentlemen, when you find this state of the matter to be by far the clearest thing proved in the case, and then find even more than the possibility of death by accident, or death by violence not premeditated, and which might not have been at all in the act or the intention of this prisoner, I am entitled to call upon you to consider well the evidence by which it is said that the guilt of murder is fixed upon him. He is not indicted on anything but a charge of cool, deliberate, and premeditated murder. The prosecutor is bound to show that it was premeditated—that it took place by his act—and was perpetrated in the prepared and deliberate manner described by my learned friend.

Now, gentlemen, I say, and I hope I may be able to prove it to you immediately, that the whole of the prosecutor's case depends on the *socii criminis*—the alleged accomplices in the deed charged. If not from the two Hares, you have no evidence on which you can with the least safety tax your conscience to convict the prisoner. I say, that without them, you have no evidence, either of the *crime* or of the *criminal*. We shall examine the circumstances relied on, a little carefully, immediately. But, gentlemen, before I do so, let me make this one remark, in which I think you will certainly concur. Most certainly if the learned prosecutor had thought that there was evidence sufficient for a jury to convict of wilful murder in this case, without any person being admitted as king's evidence or approver,

Addresses to Jury.

Dean of Faculty

most assuredly his Lordship would never have thought of permitting any such person to stand before you as a witness this day—it is impossible that he should have done so—for observe what sort of a crime it is that is in question. it is a wilful and deliberate murder. The parties brought before you to be examined, are persons, (according to their account of that matter), who were participators of the whole guilt, and have admitted themselves to be so. Would they be permitted to stand there as witnesses, instead of being placed at the bar of justice, if it had been known that the case could have been made out to the satisfaction of a jury without them? I apprehend not. It is inevitably to be inferred that the whole evidence being known to the prosecutor, and well weighed by him before this course of proceeding was adopted, it was found to be indispensably necessary that no less than two persons who have confessed themselves to be stained with the most enormous guilt (if there is any truth in their statements), are withdrawn from the bar, and presented as credible witnesses before you. I think I am not stating too much, when I say that we have here the best authority for holding, that without the evidence of these persons, it is impossible that there can be a sufficient case against the prisoner. Now, gentlemen, I would request of you here again to fix your understandings to an accurate consideration of the evidence, by making the necessary separation. Be so good as lay aside for the present the testimony of those alleged accomplices altogether. Take the case that they did not exist—that they never spoke a word to you to-day; that they were not here present, or if present, were standing at the bar. In this way only can we see correctly whether there is evidence on which you could be called upon to convict the pannels at the bar. I know it is proved that there was an elderly woman that went into the house of Burke at a certain time—that she probably lost her life in that house—that she was there after she went from the Connoways' into the Burkes' house, and neither shall I trouble you with any discussion of the question, as to the identity of that person, or whether the person that so went into Burke's house was the person murdered, or the person that lost her life. I shall suppose that the person is identified—that the clothes are identified—and that she was the person that lived in the Pleasance, and was afterwards found dead in the surgeon's hall. But then the question is, *first*, on the *fact of murder*, and *secondly*, on the person who committed the murder. You must be satisfied of *both* these facts, that the death was by *murder*, and that *Burke* was the *person* who committed it. Now with regard to the fact that a murder was committed, the first thing for us to see is, whether it is sufficiently proved that this woman died by *violence* at all. And I shall take the liberty of saying that it is not proved in a manner which ought to satisfy any jury that she lost her life by *violence*; on the contrary, the evidence that the prosecutor has brought to prove it, proves, I submit to you, the very reverse. For what does it amount to? Gentlemen, you have the evidence of the medical gentlemen, Mr. Black and Dr. Christison. The first tells you that he *will not venture to say that he had a medical opinion at all* from inspection of the body, as to the cause of death, or whether it was by violence or not, he tells you, that having obtained information as to *other circumstances*, which I shall speak to, his private opinion was that it

Burke and Hare.

Dean of Faculty

might be from suffocation that the woman died, but as a *medical* man he had no opinion whatever upon the subject. Then, gentlemen, what does Dr Christison say? He swears that he found some marks on the person of this woman, and that none of these marks, and not all of them together, were sufficient to account for death in the ordinary way, but, taking *all the medical circumstances* together, he thinks they might be sufficient to justify a *suspicion* that she died by violence,—that she died by suffocation. The first view of it, then, gentlemen, is, that, *speaking* from medical knowledge, and on *all* the medical facts to be found on the most strict examination recently after death, the utmost he can say is, that they will justify a *suspicion* of death by violence. I need not say that it is not on *suspicion* merely that a jury can proceed. But passing from his medical opinion, Dr Christison goes on to refer to other circumstances. Having heard the whole evidence this day, he goes on to tell you that upon that view of the facts, and combining them with the medical circumstances which he had specified, he thinks it *VERY PROBABLE* upon the whole that she died by violence; and being afterwards asked again, he tells you plainly and clearly, that the *utmost* point of opinion to which he can go, is to say, that upon *all* the facts it is a *probable case* that she died by violence. Why, gentlemen, he goes a little further, and says that *all the same symptoms might appear from death occasioned by intoxication*; for if the woman came into a particular position, which for anything you know she well might, if she came in contact with soft substances on her mouth and nose, and various other ways which he specified, her body might exhibit *all* the same symptoms which he found on the body in this case, and yet the death be occasioned by intoxication without any violence whatever. In the trial of crimes, and more especially in capital cases, you know, gentlemen, that it is not strong *suspicion*, and not *probability* in any degree, that affords ground for a verdict of guilty. There must be *clear legal evidence*, producing a decided conviction in the minds of the jury of the actual fact, such evidence as leaves no reasonable ground for doubts. And yet here, in the very ground-work of the case—in the first element of the *corpus delicti*,—the fact of death by violent means—we have the prosecutor's case, upon his very best evidence, left upon mere *suspicion* in the first instance, and a simple *probability* at last.

Now, gentlemen, I appeal to you and to your experience, have you ever heard of a case of life and death—of a trial for wilful murder—in which a jury has been called on to receive conjectures or suspicions in one view, and a merely probably inference in another, as amounting to the evidence which the law requires? I apprehend that you cannot be warranted, upon your oaths, in so serious a case, to proceed on any such grounds. You will always remember, that at present, I am considering the case, putting the evidence of the two Hares entirely aside. Putting them out of the case, you know very little of what passed after the woman left Connaway's about nine o'clock, or half-past it. You know nothing but what you get from them, except the facts stated by Mr Alston, to which I shall speak immediately. In other respects you have no evidence except upon presumption. Then, gentlemen, I am now entitled to say for the prisoner, upon the evidence, that the woman might (consistently with all that is proved) have lost her life there through

Addresses to Jury.

Dean of Faculty

intoxication. There are indeed facts proved in the present case sufficient to render it very possible, and even probable that that must have taken place. The direct evidence only proves ground for *suspicion*, or at the utmost a *probability* of death by violence, while it also shows that intoxication might account for all the symptoms. And when we are considering this as a mere supposition, from appearances after death, is it not highly important, that there is clear evidence in this case that that woman had actually participated largely of strong liquors, during the whole day, and truly was in the condition which might without violence have produced the effect? It would be in vain to tell us that Dr. Christison did not smell spirits in dissecting the body; for the fact of her having drunk spirits to a great extent in the course of the day is unquestionably proved. It is part of the prosecutor's case. And therefore Dr Christison must just add this to the list of cases in which he says there was no perception of spirits by smell, though it was certain that they had been largely received into the stomach. Here also it is certain that this woman did take a large quantity of spirits on that day. Indeed if you believe one word of Hare's testimony, he tells you that she was so drunk that she could not stand—so drunk that she could not rise when down. Then, gentlemen, we have the case established which by the evidence is sufficient to give a probable account of the death of this woman without any violence whatever, and if suspicion or probability will not in any case avail *against* a prisoner, still more clearly must any probable account of the matter, consistent with innocence, be sufficient to meet any such case of mere suspicion and probability against him.

But now, in the *second* place, suppose, gentlemen, you got over this first difficulty, and were of opinion that there was evidence that the woman died by some violence, the next question is, Whether there is evidence of *murder*? and of murder by Burke? There may have been death by violence, and no murder; and there may have been murder, and not murder by Burke. Laying the Hares aside, the case of murder is attempted to be made out by a train of circumstances. There are a variety of circumstances insisted on. The first is, that Burke met the woman in the shop; that he pretended he was a near relation to her; that he sent the Grays out of the house that night, that the woman was seen in health late in the evening, and that she was found dead next morning, that great pains are taken to conceal the body, that it was instantly afterwards sold, that Burke had gone to Paterson's at 10, and afterwards at 12; that Mrs Burke offered to bribe Gray and his wife, if they would be quiet: Then follows the evidence of Mr Alston and Gray. In order to judge fairly of the weight of each of these circumstances, and of the whole together, I must beg of you to suppose to yourself that really and truly Burke did not destroy this woman, and never had such an intention. Assume this for a moment, which is only the common presumption to which all persons accused are entitled, and then one and all of these circumstances admit of the most easy and simple explanation. The fact is, that Burke met this person in Rymer's shop, and as she complained of having had no breakfast, he offered to give her her breakfast. She said her name was Docherty, and it is assumed by my learned friend that Burke asserted

Burke and Hare.

Dean of Faculty

that she was a relation of his, and pretended that his own name was Docherty. With deference to him, this is not according to the evidence. The evidence is, that, when she said her name was Docherty, he said that his *mother's* name was Docherty, and she *might* be a relation of his — Instead of telling her that his own name was *Docherty*, he told her that it was *not*, as it must have been inferred that *his* name was his *father's* and not his *mother's*, and it does appear, that the woman persisted in calling him *Docherty*, even after Miss Connaway had told her his name was Burke. The fact is, that his mother's name *was* Docherty, and nothing to the contrary appears. It comes, therefore, to this, that finding her in a miserable state, he proposed what, if fair intentions be assumed, was a mere act of kindness. He offered to give her breakfast, and afterwards offered her a night's lodgings in his own house. Is this a circumstance which, without pre-supposing guilt, leads to anything? If you do not presume an intention to murder, there is evidently nothing at all in it which tends to establish guilt against the prisoner. It is next said that the Grays were sent out of the house. That is explained in various ways; one explanation is, that there was a difference between them and the Burkes, and Miss Gray said she supposed, that because it was Hallowe'en, and there was to be a merry-making, they wished them to be out of the house. But what difficulty is there in supposing that he asked them to go out of the house for the very purpose of accommodating this old woman for the night? If you assume good intentions, is there any mystery in this? This was a house which the lower Irish frequented, the Grays had been only three or four days there. It does not appear that they paid Burke any rent for their lodging, and it does appear that he was under the necessity of hiring lodgings for them. It is plain that this very simple circumstance could be explained in a hundred ways without implying a design to murder this woman; unless you can find the facts proved otherwise, by good legal evidence, which leads to that conclusion. It is, in truth, by first assuming that the case of murder is proved by the accomplices, that the prosecutor is at all enabled to raise up every trifling circumstance as tending to the same result. Without that assumption, they are in themselves of the most innocent nature. But it is next said, the woman was seen in health, and is found dead in Burke's house. This indeed may infer that she died suddenly, or by some violence, but it is not a fact which will prove murder, especially considering the habits of Burke and Hare, unless it be combined with circumstances of a very different nature. In itself it gives you nothing more than ground to suspect that she may have lost her life by violence. Then, gentlemen, the concealment, and the false account given, were all after this woman's death. I shall not dispute, I admit it is quite clear, that Burke then contemplated to dispose of the body to the surgeon. But assuming this, the concealment of the body, in the first instance, was natural from the nature of the trade in which this man was engaged, and from the very purpose imputed to him in this case. In like manner, the false and contradictory accounts given, are all what might be expected under such circumstances. Then the fact of his selling the body next day, proves nothing surely except that, having got into his possession the body of this woman, he followed his trade in selling it; and whatever

Addresses to Jury.

Dean of Faculty

disrepute may attach to it, such an act does not prove an act of murder. We are next told that he went for Mr Paterson. My learned friend attached great importance to the circumstance of his having called at Paterson's at 10 o'clock at night. This kind of argument would be very well, if you could assume the fact that he was to murder the woman, but how does this prove anything as to the fact of the murder, if you do not first assume the intention? This person was in constant communication with Paterson on matters of a different kind, and all that appears is, that he merely called at the door, did not find him, and there was no more of it. Lay aside the assumption, which my learned friend had no right to make in this part of his argument,—and the circumstance is altogether trivial in this view of the question though it is of importance in another view of it. But, no doubt, he went again to Paterson's at 12 o'clock at night, and brought him to the house, when some reference to a dead body was made. I cannot help thinking, that that circumstance bears strongly the other way,—as it is a very improbable thing, that a man, conscious of murder so recently committed, should have brought a *surgeon* to the spot, and asked him to look at the body, so as to expose himself to instant detection.

But, gentlemen, let me say a word on the testimony of Mr Alston, which, I grant, is of considerable importance in the case. As I understand it, however, it utterly extinguishes the whole evidence of flare and his wife, and shows, that in whatever way the old woman may have lost her life, *they* were giving to you a tissue of mere inventions, on which it is impossible you can place the slightest reliance. Mr Alston says, that he heard a violent riot in this house,—and he went down and listened,—that he heard men fighting, and making a dreadful noise, and blows,—that he heard a woman's voice in the passage, calling murder, and that she was knocking on the outer door,—that he then heard certain extraordinary sounds, resembling an animal suffocating, though he cannot describe precisely what they were. Now, gentlemen, I do think you will agree with me, that it would be the most hazardous thing in the world, to find a man guilty of wilful murder, upon such slippery accounts as this. According to Mr. Alston's account of the matter, he was three or four yards distant from the outer door of the passage. The passage is about fifteen feet long, with a turn in it, and there is an inner door; so that there were thus two doors between Mr. Alston and the house, and a distance of nearly thirty feet. There were men's voices in the house, and a woman's voice in the passage, exclaiming murder all at the time, and beating on the door; and it is in the midst of this noise and riot that Mr. Alston says that he heard those faint screams, or movements, like suffocation. I apprehend it would be most unsafe, indeed, for a jury to rely upon this. It might have arisen from a variety of circumstances, which cannot be explained in the case of a person's having been, even though innocently, connected with the death of this woman. I do not mean to say that the circumstance is not of importance for your consideration, but it is very far short, indeed, of the evidence by which a jury ought to be induced to convict any man of wilful murder.

Gentlemen, I have now gone through all the circumstances on which I understand the prosecutor to rely, and all, I believe, that are to be found

Burke and Hare.

Dean of Faculty

in the evidence as affecting Burke My learned friend did, I believe, mention the representations made by M'Dougal to the two Grays In the *first* place, I think, gentlemen, if you examine your notes, you will find that the testimony of these Grays is extremely confused and contradictory. But taking it as it is, the circumstance alluded to is accounted for, by the situation in which the man and the woman were placed, from being in possession of the dead body, independent altogether of the supposition of murder I might observe, that what the woman said, is not evidence against Burke, but, at any rate, her anxiety for concealment, and fear from disclosure, are as little conclusive of the case of murder, as the other circumstances on which the prosecutor has founded. And now, having gone through them all, do you put them all together I know it will be said, that in a proof by circumstances, the proper way is not to consider each fact by itself, but put them all together, having a due regard to the admitted situation of the man—and, recollecting that, in the present view, you have no direct evidence of what took place in the room And then I ask, whether, upon such slippery and doubtful circumstances, you could think it safe to pronounce a verdict of guilty? I apprehend that you could not. I have not alluded to the declarations Upon these I shall say a word In the *first* place, I apprehend that these declarations are of no manner of importance in a case like this, where, from obvious reasons, it is proved that the persons examined must have been desirous to conceal the state of the circumstances in which they were found There were evident causes to induce them to do so, without supposing consciousness of murder, they have not admitted, but *denied* all accession to the murder. If they had admitted it, it would have been a different thing,—all that my friend gets from the declarations is, that they had made a false representation of the circumstances, and, in a case like this, I submit that such contradictions are of very little importance.

It is at the same time deserving of remark, that the pannel, Buike, has been brought to make no less than five declarations, relative to a variety of crimes, enough to perplex the wisest head, however innocent he might be, and if you find inconsistencies and contradictions in them, it is no more than might be expected, and really gives no aid at all to the evidence for proving the charge of murder. But leaving this also to the jury, and allowing the prosecutor to take the facts altogether, the public prosecutor must be satisfied, that without the testimony of the accomplices to the direct fact, he has no case whatever for obtaining a conviction There are even one or two circumstances which lead the other way The supposition is that Buike murdered the woman, and did everything in his power to conceal it But did he really proceed as a man would have done, who was conscious of such an act, and afraid of the least approach of any person by whom it might be detected? The first thing is, that at twelve o'clock at night, he, immediately after the woman was dead, went for a medical man,—a surgeon, to come to his house, and asked him to come to look at the body so says Mr Paterson He said that he had got a subject there, pointing to the place Paterson did not see it, having immediately left the house But, gentlemen, can anything on the face of the earth be figured more unlikely, than that a man who was conscious of

Addresses to Jury.

Dean of Faculty

his having committed murder, was to go for a medical man,—a surgeon, to come to the house immediately, where the murder was committed, and ask him to look at the body? Whatever might be practicable at a latter period, the surgeon could then have discovered, with certainty, that the death was produced by violence, and seen the precise cause of it. Therefore, that fact, so far from being against the prisoner, is very much against the inference of guilt. We have another fact of the same kind. We are told that Gray was sent out of the house, in order that this murder might be accomplished. But it is distinctly proved by Gray, that Burke went for him next morning, and brought him to *his house* to breakfast, deliberately and intentionally, knowing that the body was lying in the house at the time. He voluntarily invites and calls upon these people to come into a situation where it was next to certain, that if a murder had been committed, it must be detected. This fact takes away all weight from the circumstance, that the Grays were sent out of the house the day before. They say there was some endeavour to conceal the body, throwing whisky about to prevent the smell, &c. I do not doubt it in the least. However, he does not seem to have been very anxious about that matter, for he desires the woman to put on potatoes, and she goes under the bed to search for them; and at last Burke goes out of the house, the Grays are left in the room by themselves, and then they immediately discover the body. The whole of that series of facts may be accounted for, on the supposition that he was merely taking advantage of circumstances to turn the death of the woman to a means of profit, and that the Grays being probably aware of his occupation, he was under no very great anxiety as to them. But you must suppose that the man was utterly bereft of reason, if, having committed a murder, and being desirous of concealing it, he acted in this manner. He just rushed wilfully into certain detection. It was by his own deliberate act, that these persons were called into his house, in order, as must be assumed, to see the state of it, and examine everything that had been done in it. This, at least, has little air of probability.

Gentlemen, before I come to the evidence upon which the prosecutor must at last rely, I must beg of you to observe, that there is still another fact, on which you must make up your minds,—besides death by violence, and that violence murder, before you find Burke guilty. You must be satisfied that *he* is the murderer. You have no evidence how the thing was done at all, if you lay aside Hare and his wife,—it was done within the walls of the house,—no one was present but the Hares, and the two prisoners, if they were both there at the time. But it may have been committed by Hare, without Burke having been concerned in it. Hare says that Burke committed it; but, for anything that appears in the other evidence, it may have been committed by Hare himself, or any other person; and Burke may not even have been present. According to the evidence, it was half-past nine o'clock, or thereabout, when Hare and his wife, and M'Dougal, I believe, left Connaway's room, and went into Burke's. According to all the evidence, independent of Hare or his wife, the old woman went into Connaway's after. Burke was not there at the time. It is then found that he was away at Paterson's at ten o'clock. Now, gentlemen, you have not a grain of evidence of what took place with this

Burke and Hare.

Dean of Faculty

woman from half-past nine o'clock, until you come to the period of twelve o'clock, when Mr Paterson came there. You have evidence of noise in the room,—but where is the evidence that Burke was there at all at that time, or, at any rate, before Alston heard the noise after eleven? It is not in evidence at all, except by Hare, for my friend is in a mistake, in saying that it was at eleven o'clock that the woman was last seen alive. We have no such evidence of that, except the Hares'. But suppose it to be true, that Burke came down 'thereafter he had been at Paterson's—still, even this is not conclusive. He was at Paterson's at ten o'clock, and though there is a supposition that he had passed in when the old woman left Connaway's, I cannot hold that to be proved. Then there is a considerable interval between the time that the parties went from Connaway's into Burke's house. Now, where is the evidence that this woman was not killed when he was out of the way at Paterson's? There is no evidence to prove that he was there at that time, it is left under that possibility, that she might have been murdered by Hare in the interval, and the subsequent quarrelling may have arisen from that very cause. It is very true, I do not know that this is the fact. I am not bound to prove the prisoner's innocence,—it is the duty of the prosecutor to fix guilt upon him, so as to exclude every other supposition. Suppose I make another concession,—suppose Burke was in the room, the murder might have been committed by Hare, in various ways, not implicating Burke. It may have been done in the very riot and fighting which took place. She may have lost her life by sudden and unconcerted violence by Hare, for which Burke was not responsible. It might have been done in another plain way. They were all in a state of intoxication at the time, and it is possible that the thing might have been done at a time when he was not aware. He may even have been asleep, after all the riot was over. Thus, gentlemen, on the whole matter, if you lay aside the testimony of the Hares though there may be circumstances of strong suspicion, I submit to you, *1st*, That there is no good legal evidence, even that the woman died by violence,—*2dly*, That there is no safe evidence of the murder, even if it were held to be proved that she died by violence;—*3dly*, That there is no satisfactory evidence that the murder, if assumed to have been committed, was the act of Burke, or was so committed, as to render him an accessory in the commission of it.

Gentlemen, I am now brought to the consideration of the important question, regarding the testimony of the accomplices. And the question is, whether you can give the smallest credit to these two witnesses? Gentlemen, upon principle, I shall submit to you, that though such witnesses are, in point of law, *admissible*, yet it belongs to the jury to weigh their credit; and that, in such a case as this, they are entitled to no credit at all. What is it that this man Hare confesses? What is it that he states before you that he has been doing?—That which, if he speaks a word of truth, would infer that he has committed the most infamous crimes that you can suppose a man capable of. The law of the country, gentlemen, as it now stands, is, that if that man uttered the same words at the bar, which he uttered in the witness' box, he would have stood convicted of the crime of murder, without even the intervention of a jury.

Addresses to Jury.

Dean of Faculty

The mere uttering of the fact, would have been all that would have been required, and, on that confession being recorded, infamy would have attached to him, though he had been permitted to live, and no jury could have been allowed to give him credit. In point of principle, then, I ask you where is the difference? Is he more credible, because he comes before you under the name of a witness, and confesses that he has committed this heinous crime? Upon the same confession at the bar, he would have stood convicted, with or without a jury. Disability to give evidence must depend on principles of moral reasoning, on which the individual is held not to be possessed of that sense of truth on which the credit of human testimony entirely rests. But how are these principles changed by the accidental circumstance of the crime, which stamps the infamy, and produces the disability, being *confessed before you* by the witness, instead of its being confessed or proved against him as a culprit at the bar. In every question as to the verity of such evidence, or the moral grounds of belief connected with it, the cases are the very same; and a jury are entitled to say,—“We will not convict any man upon such testimony,” because this is not a person who has the ordinary principles of veracity, because even the law holds him, by the fact admitted, to be a person who is not to be bound by the common laws of truth, or the sanctions of an oath.

If, again, gentlemen, you look to the specialties of the case, can you put the smallest faith in the testimony of this man Hare, and his wife? What is there to restrain them from telling the most deliberate series of falsehoods, for the purpose of fixing the guilt on the prisoners, and extricating themselves from the condition in which they stand? Here is a person who tells you, that for the paltry object of a few pounds, he was leagued with another to destroy his fellow creature, and when he is asked if he had ever committed other murders, *declines to answer the question*. This is the person that comes before you this day, and he comes, not with the motive of a few shillings or pounds, but the tremendous motive of saving himself from an ignominious death, which the law would inflict upon him if he did commit these horrible crimes. But he comes also with the hazard hanging over him, that, if he fails to support the statement which he had previously given,—the prosecutor has, at least, two other charges which may be brought against him, and perhaps more, for anything that I know. But it is enough that he has this constraining motive, to throw this charge of murder upon these prisoners, to save himself from the death which he certainly deserves. Where, then, is there any restraint upon him from passing on you the most false inventions? He comes here without one grain of principle, or moral feeling, he is not in a free state, but tied down to make out the case against the pannels, as the condition on which to save himself. Just change the position of the parties, and suppose that Mr Hare was at the bar, and Burke in the witness-box. I do not know what case you might get from Burke or M'Dougal; but nothing could hinder them from making as clear a case against Hare and his wife, totally transposing the facts, and exhibiting the transaction as altogether the reverse of what Hare says it is. I, therefore, submit to you that from

Burke and Hare.

Dean of Faculty

the confessed infamy, and total destitution of principle attaching to these witnesses, you can never consent to put a grain's weight on their testimony.

But, gentlemen, even if these witnesses were otherwise entitled to the smallest credit, surely it can only be under the condition, that the testimony which they have given, is free from contradiction, clear, straightforward, and consistent; and not testimony which is contradicted by itself, contradicted by the other accomplice, or contradicted by other and far better evidence in the case. Now, gentlemen, I will say, that I have seldom, if ever, heard two persons, in the situation of these witnesses, present to a jury a greater mass of contradictions, inconsistencies, and plain falsehoods, than are to be found in their depositions. Gentlemen, I have made a list of some of those contradictions, and I will go over them. I do not know that I have taken them in the best order, but you will easily follow and recollect them with the aid of your notes.—You will remember that Brogan swears, that when he came into the house, at two or three in the morning, he lay down *by the fire with the two women*, and that Burke and Hare were in the bed. What says Hare to this? This veracious and correct witness is pressed upon it, and adheres to it, that *the two women were in bed*, and that Brogan was sleeping in the *back part of the bed*, behind his aunt, as he is pleased to call her, and the circumstance of Brogan's being at the back of the bed, behind the women, is too remarkable, to admit of a supposition that there was any mistake in it. Now, when we ask Mrs Hare, she partly reverts to Brogan's account, but differs from both. She says, that the women were on the floor, and one of the men was in bed, and the other in the chair. By the one party, both the women were in bed, and Brogan there,—by the other, the two men were in the bed, and the two women, with Brogan, on the floor,—and the third places the women on the floor, with Brogan and one of the men in the bed, and the other in the chair. There is contradiction for you! If they were capable of judgment, and in a situation to give evidence, it is impossible that mistake or misconception, to this extent could take place. Next, Hare says that the moment Burke got above the old woman on the floor, Mrs Hare and M'Dougal escaped *out of the bed*, where they had been. That is flatly contradicted by Mrs Hare. She says she was *not* in the bed,—she was standing by the door,—and that she did not get out of the bed at all. Then Hare says, that at the time this scene was transacted, he was sitting quietly on the chair. What says Mrs Hare? That he is standing by the dresser, at the time she went out of the room with M'Dougal. Now, this is a very important part of the matter, as you will presently see. Hare swears, that Docherty was so drunk that she could scarcely stand; and that, when she was on the ground, she attempted to rise, and was unable to accomplish it. Mrs. Hare will scarcely acknowledge that she was the worse of liquor at all. Here I beg to put to you this alternative.—I will take either of these suppositions for a moment,—either that she was so extremely drunk, as Hare says,—or not. If she was in the state of intoxication described by Hare, then the consequence described by the medical gentlemen might naturally follow;—but if she was not in a state of intoxication, and yet fell to the ground, and was unable to rise, though she attempted it, and nobody prevented her, why, then, is not the conse-

Addresses to Jury.

Dean of Faculty

quence inevitable, that she must have suffered from a fall of a very serious nature, which may have produced death as the consequence. Indeed, according to all the evidence they have produced, whether she fell, or was pushed or knocked down, she never arose from the spot where she fell. She was drunk, or she was not drunk; and, in either case, it leaves room for a natural explanation. Then we come to another most important contradiction between them. Hare tells you,—and it is a statement by far too cunning and too clearly betraying the object, to allow of the supposition that he said so carelessly,—that the old woman ran into the passage, and called out murder, while the fighting was going on. What says Mrs Hare to that? She says that the old woman was *never out of the room* at all. She says that the *door was never opened*. Here there is a direct contradiction in a most important fact of the case. But, gentlemen, this carries us forward to another still more important; for Hare said that the prisoner *M'Dougal went twice into the passage, and brought back the old woman*, when she was crying murder. If you believe Mrs. Hare, this is a downright falsehood, for the question was put plainly to her, and she swears, in the *first* place, that the old woman never was in the passage, and, in the *next* place, most pointedly, that M'Dougal never brought her back. What are you to make of such evidence? You must be asked to believe either the one or the other. But I think your answer must be, that you will believe neither. Then we went on, during the whole day, gentlemen, in the proof of the fight between Burke and Hare, which is supposed to have begun the riot, which terminated between eleven and twelve, according to the account given by Mr. Alston; and they were all quiet in this room afterwards, with the exception of the coming in of Paterson quietly. So, at least, Mr. Hare tells us. But when we come to Mrs Hare we find that there is a second fight, later in the night; that the two men fought a second time, and were stopped with great difficulty. But, gentlemen, how does this tally with the evidence of Hare otherwise? He tells you that after Paterson had been there, he lay down in the bed, and he lay there constantly; and at last fell asleep, and *did not awake till seven or eight in the morning*. Not a word of this second fight; he was in a quiet sound sleep during the whole time. Therefore, gentlemen, you see you can place no reliance either on the one or the other of these witnesses.

You will next find, that there is a most important statement made by Hare, that the old woman was brought into Burke's house so early as nine o'clock on Friday morning. It is in evidence, if anything can be relied on, that that is not true; for it appears by Connaway and Law, both of whom concur precisely in stating it, that the first appearance of the old woman in the house, or in any place near it, was about two o'clock of the day; at which time Mrs Connaway says that she was sitting by her fireside, and saw Burke followed by an elderly woman whom she never saw before, go past into his house. Mrs Law was sitting with her, and precisely concurs in that statement. Gentlemen, it is not without importance, because you will recollect, that by Hare's testimony, he pretends that he was sent in the *fore part of the day* to see how things were going on; and when they call three o'clock the *afternoon*, we must understand the early part of the day to be before twelve. But he tells you that he was

Burke and Hare.

Dean of Faculty

there about eleven o'clock, that Burke sent him down to see if the old woman was there, that is quite clear. But all this is contradicted by good testimony, which there is no resisting.

Gentlemen, I come now to a state of facts which I hold to be of the very utmost importance in this case, and that is what is given in the testimony of Mr Alston, compared with the statement of Hare and his wife. Look to Mr Alston, and see whether he confirms their testimony in material points, or whether he does not contradict it most essentially. It will be admitted that such testimony is of no value, if it be not *confirmed*. Now Alston says that he heard the cries of murder, by a very strong female voice. Hare expressly swears that the old woman went into the passage and called murder, and that no one else ever called murder—that is the first point. Mrs Hare says, that there was no call of murder, except within the room. Now, in the *first* place, Mr. Alston is positive that that cry of murder, and the knocking on the door, came from the passage, and that the knocking was on the outer door of the passage, that he tried afterwards, and found that it could not have come from the inner room, but must have come from the passage. Is not this a most material point? Mr. Alston expressly swears that the cry of murder was made by a voice *totally different* from that from which the *moaning or choking* noise proceeded; and the voice was *extremely strong* for the voice of a woman. This being the case, the cry of murder must have been made by some one else, if Alston is to be believed, and of that, I suppose, you entertain no doubt, it must have been by some other person than the individual suffering. If you are to put the least faith in Alston's statement, he first heard the noise of fighting, and cries of murder, and the knocking on the door; and it was in the midst of this, that he heard the choking sound. Look at Mr Alston's testimony, and you will find that it is so, and as he heard the cries of murder before this sound, so also he swears particularly, that he heard the cry of murder *after this sound*; which, if it has any weight or bearing, must be supposed to have been the sound of the dying woman. It is therefore impossible, that the cries of murder to which Alston speaks, could have come from her, for the sound of the voice was peculiarly strong for a woman. The thing is absolutely and morally impossible. But, gentlemen, even this is not all, Mrs Hare says she went into the passage with M'Dougal, that she is *quite positive* that there was *no knocking on the door by any person whatever*. Now, if there is a grain of truth in Mr Alston's statement that touches the present case, it is, that he heard rioting, and the choking sound, and, at that very time, there was a person calling murder in the passage, and beating violently on the outer door. Is Mrs Hare then a credible witness? If you believe Mr. Alston there is complete contradiction, both of her and her husband, in the most important points; and not only so, but it is such contradiction as to be absolutely fatal to the whole testimony, and destroy the whole connection of the story. The account that Hare gives, is, that there was a fight between the men,—that the woman tried to separate them,—that the old woman called out murder, and then attempted to separate them,—and was pushed over,—and then all was quiet;—for Hare says expressly, that after he was thrown

Addresses to Jury.

Dean of Faculty

on the bed the second time, and before Burke had got above the old woman, the fray ceased, he was perfectly quiet, he was sitting quietly in the chair, and he tells you, at last, he did not utter a word,—all was quietness in that moment, and there was no call of murder, no moaning, no going into the passage, and no knocking upon the door. Mis Hare again gives a different account of it, only clenching the matter with this, that she places herself in the passage during the time the murder was going on, and then asserts there is no call of murder, and no knocking. But Mr Alston's account is perfectly at variance with all this, he went down,—the woman came into the passage, called murder and police repeatedly, and beat violently upon the door and, while that is going on, he heard the choking sound, which, he thinks, might have proceeded from the old woman dying, but the noise does not terminate for a very considerable time afterwards, for you remember, that after Mr Alston heard that, which he thought enough for rendering it necessary for him to do something, he left the door, and went up the street in search of the police and thinking, after he was in the street, that the quarrelling and noise had abated, he went down again, and then found all quiet. Now, gentlemen, this statement, taken altogether, so far from coinciding with the account which the Hares give, is utterly destructive of it, and shows, that whatever may be the truth of the case, their story is a tissue of inventions, and whatever account is to be given of the manner of the old woman's death, you have not got it from these witnesses.

When you have witnesses so situated, bringing infamy with them wherever they come, and find them involved in such numerous and palpable contradictions, I ask, can you put the smallest faith in one word that they have said? I humbly conceive that you will not, for you can scarcely find one single material fact asserted by the one, which is not contradicted by the other. And yet this is the evidence on which the case rests. It is very true, that these infamous witnesses agree in one single point. They have invented a story, and a method of the murder, which they impute to the pannels in this case,—in that they agree, but in nothing else. This is exactly where a combination of false witnesses will in all cases concur, and the falsehood of their testimony is to be detected, by the flat contradiction in the material connecting circumstances. In the present case, it is to be discovered, not in one instance, but in many essential points throughout their testimony. Their concurrence in the general assertion, and their subsequent contradiction in all material particulars, shows the way in which they are connected in a false story, and the impossibility of holding to it. Gentlemen, there is still another positive contradiction.—Hare says he got no money from the assistant of Knox. Is it not proved by Paterson that he did? But not only so: Does not Paterson swear that Hare as frequently acted as principal as Burke did? and he (Paterson) divided the money, to prevent disputes. Surely you will believe the testimony of Paterson, in opposition to that of this man Hare.

Gentlemen, I have very nearly done, and will relieve you in a few minutes. I come to the result. Perhaps it may be imagined, that because this woman has lost her life, and there is no clear account of the manner

Burke and Hare.

Dean of Faculty

of her death, it may, therefore, be unavoidable, to hold Burke guilty of the murder, as being the most probable account of it. But, gentlemen, I apprehend, that this would be no safe rule of judgment. The case may not be explained. It may be *left in mystery*, and yet there may not be ground for *legal* conviction. You must have credible legal evidence, such as to leave no reasonable or fair doubts of the pannel's guilt. I don't say, gentlemen, that it is to be pushed so far, as to exlude every mere possibility, but you must have such evidence, as to leave no reasonable doubt of the guilt of this man. But there is no difficulty, in any view of accounting for all that appears. What, if that ruffian, who comes before you, according to his own account, with his hands steeped in the blood of his fellow-creatures, breathing nothing but death and slaughter.—What if that cold-blooded, acknowledged villain, should have determined to consummate his villainy, by making the prisoners at the bar the last victims to his selfishness and cruelty? What is there to restrain him? Do you think that he is incapable of it? It is impossible for any man who heard the trial to think so, and if so, what difficulty is there in accounting for the whole matter? The murder might have been committed by him, and all the means prepared by him, for exhibiting the appearance of circumstances to prove it against Burke. It will not do to say that this is a case of proof by circumstances, and therefore, any probability, or any suspicion, is enough. True it is, you must determine on the weight and conclusiveness of a proof by circumstances. But it is still by *evidence*, and not by mere conjectures, suspicions, or probabilities, that your judgment can be guided. You must have *legal evidence* in this, as well as in all other cases, that the crime was committed, and that the prisoner was the person who committed it. Gentlemen, if it were otherwise, what would the condition of any man in the country be? If a man's life, or liberty, or character, were to hang on the breath of such witnesses as Hare and his wife, what security could any man have for his existence in society for a single hour? It is the easiest thing possible for such a base villain to destroy the life, or the condition, or the happiness of any man.

The principles and rules of evidence, are among the most sacred rights of the people of this country. They have been much insisted on by all the best lawyers and judges, who have had to deal with such trials,—and any violation of them, under the influence of feeling, would break down the securities under which we all live in safety. I trust, therefore, that in this case you will do your duty to your country, and to the prisoner, and that, without clear legal evidence of his guilt, you will not convict him of the dreadful crime with which he is charged.

Mr. Henry Cockburn's Address to the Jury.

Mr. HENRY COCKBURN—*My Lord Justice-Clerk,—Gentlemen of the Jury*—I have the honour to address you solely as counsel for the female prisoner; and considering the hour, I will not hasten, but *hurry* over, the facts and the views upon which I feel the firmest conviction that you can pronounce no verdict, so far as she is concerned, but one that will declare

Addresses to Jury.

Mr Cockburn

that the charge against her has not been proven. In stating these facts and views, I shall assume, (though in the face of the admirable address which you have just heard, I cannot admit),—*1st*, That there was a murder committed, and, *2dly*, That it was committed by the prisoner, Burke. Still I maintain, that there is not sufficient credible evidence to convict this woman. And if you knew how to interpret the pleadings of counsel as well as we do, you would have seen perfectly well, that the Lord Advocate himself feels that there is a most material difference between the cases of the two pannels

It is not alleged that this woman was a direct actor in the murder. The case is only attempted to be made out against her, by saying that she was what our law terms *art and part* of it, which, in this case means, that she had such accessions to it, before and after the fact, that the legal guilt of it was truly hers as well as his. This makes it absolutely necessary that we should have some idea of the nature of that accession which will involve one, who is not a direct actor, in the guilt of the primary offence, and, on this subject, I am glad that I can instruct you in much clearer and more authoritative language than any that I could employ of my own. *First*, as to the case of accession *before* the fact, Mr. Baron Hume says, page 271 of his first volume,—“That if the assistance is indirect only, and remote, this, *though accompanied with the knowledge in general of the actor's malice and evil design, is not a warrantable ground of conviction*. Put the case, that John reveals to James his purpose of revenge against a certain person, their common enemy, who resides at a distance, and that *James lends him a horse for the journey, or furnishes him with money at his request, to carry him to that quarter of the country*. Some weeks after, James is informed that the person in question has fallen, but as for the manner and circumstances of his death, these he only learns through common fame, after the thing is done. Though highly blameable in the part he has taken, he is not however punishable capitally, as *art and part of the murder*.” Then, with respect to accession *after* the fact, he says, (page 277), “*to assist in concealing the dead body; to harbour the actors, and help them to escape, to rescue them from the Officers of Justice, to bear false witness for them on their trial; or to persuade others to do so, or to suppress their testimony against them*: All these are, doubtless, immoral, and criminal acts, and may naturally give rise to a suspicion against those who so far forget their duty, of a deeper concern in the deed; but they are no part of the history of this murder. Nay, they do not even necessarily infer an approbation of it, *since they may be done out of affection only, or compassion for the actors, to relieve them of the consequences of that which cannot now be remedied or undone*.”

These principles are illustrated by a case reported by Burnett, (p. 270), which, in some particulars, bears a remarkable resemblance to this one.—A woman became the mother of an illegitimate child. A man of the name of Smith offered this child to Taylor, a medical student, for dissection. Taylor agreed to take it, and went to a garden to get it. On coming there, it was found that the child was not dead. On this, Smith, *in Taylor's presence*, killed the child, which *Taylor then took away, and concealed, and refused to give any account of*. He and Smith were tried

Burke and Hare.

Mr. Cockburn

for murder Smith was convicted, but Taylor was acquitted, on the ground that *presence,—taking away the body—and concealing it*, were not sufficient acts of accession to justify a conviction for murder,—even though these acts were apparently committed by the person from whom the reward of the murder was to proceed. This was in 1807, and the learned author seems to approve of what the jury did.

Now, what is the history of this woman's connection with this crime? The general features of it are not disputed. Both of the prisoners state, in their declarations, that "they were never married,"—by which they plainly mean, that no regular marriage ceremony was ever performed between them. But the relation of husband and wife may be contracted by the law of Scotland, without this,—by merely living together as married persons, and, it is clearly proved, that these two have been living in this manner for nearly ten years, nor has there been any attempt to prove the existence of any legal impediment to their being thus married, by conjugal cohabitation. In all probability, therefore, they are married,—though neither of them may know it. But, at any rate, in a moral sense, she was as completely under his influence, as any wife could be to any husband. Great allowance, therefore, must be made in judging of her conduct, from the control which he may have exercised over her, and for the interest which she may naturally, and most properly, have had in concealing her husband's crimes. For it is impossible to shut one's eyes to the fact, that this husband was a professional resurrectionist. His trade consisted in supplying anatomical teachers with subjects, a trade which, when conducted properly, is not only lawful, but absolutely necessary. The remains of mortality form the materials of that science, by which the sufferings of mortality are to be alleviated, or its date prolonged. But however necessary this employment may be, there can be no doubt that it is one which necessarily corrupts those who are engaged in it. It is shocking in itself;—it is generally conducted in violation of law,—and it must always be conducted by a disregard of the most sacred and reverential feelings of our nature. So that, in judging of her delinquency, she is fairly entitled to have her proceedings weighed in reference to the situation in which she acted. She was the wife of a person who had a professional connection with dead bodies, and with whom no woman could live, without seeing many things, which are better imagined than told. A thousand circumstances may concur in the life of such a woman, even where she is perfectly innocent, any one of which would be fatal to the idea of innocence in an ordinary case.

Under this man's roof a murder is committed. But, in the *first* place, it is not even alleged, that the woman was directly guilty of any part of the violence used. It is not asserted that she ever touched the old woman, or instigated anybody else to touch her. In the *next* place, it is proved that she fled from the place where the murder was perpetrated. She and Mrs. Hare both left the room,—both alarmed; and Mrs. Hare described herself as *powerless*. They never returned till the body was disposed of. I should hold, gentlemen, that *in the case of a wife*, this refusal to be present at the commission of the crime, was nearly enough of itself,—not to make her innocent,—but to save her from the consequences of murder. But

Addresses to Jury.

Mr. Cockburn

M'Dougal did more. It was proved by Mr. Alston, a most respectable and accurate witness, that he heard a person striking on the outer door, and calling out, with a female voice, "*Police—Murder.*" He was quite positive that this was done by a female. Now, who could this *possibly* be, except the prisoner? It certainly was not the old woman, because Alston swore, that when these cries were uttering, he, at the same moment, heard her dying sounds, which he described as the stifled moans of an animal suffocating. He was positive that these two sounds were heard at the same time. This excludes the possibility of the cries of alarm having proceeded from the woman who was killed,—and they certainly did not proceed from Mrs. Hare,—because that witness did not pretend that they did. There was nobody, therefore, from whom they *could have possibly proceeded*, except from M'Dougal, who was the only other woman there.

Now, if you believe these facts,—and unless you believe them, the prosecutor has no case, for they are proved by his own best witnesses,—I apprehend that the accession of this woman is infinitely too slight to warrant her being treated as guilty of the principal offence. She was in the house,—because it was her husband's. She was silent after the crime was done,—because even Mrs. Hare told you, that she did not think it was natural to expect that a wife would betray her husband. But as soon as she saw what was going to be done, she fled in horror, and gave all the alarm that she could.

In this situation, let us see what it is that the prosecutor relies upon. And let us, in the *first* place, consider what sort of a case is made out against her, *independently of the testimony of the two accomplices*. This will enable us to see distinctly, how much of the prosecutor's case depends principally, or entirely, upon that most suspicious evidence. It will be found, if I am not much mistaken, that there is *no case whatever* against the prisoner, except what resolves, ultimately, into the testimony of these accomplices, and, if this be true, her conviction is impossible.

Instead of going through the proof in detail, it will be equally fair, and much shorter, to select the principal circumstances on which the prosecutor seems to rely, and to consider what they amount to. So far as I have been able to discover, they seem to consist merely of the following particulars —

After the old woman was in the house, M'Dougal told Mrs. Connaway to look after her, as there was nobody else in the house, and she might go out. The prosecutor seems to consider this as a proof, that she was aware of what was intended to be done in the evening, and wished to prevent the victim from escaping. It rather seems to me, that her speaking to Mrs. Connaway at all upon the subject, is a proof that she was then ignorant of her husband's designs;—and seeing that he had brought a stranger and a beggar to the house, I cannot perceive anything of the slightest consequence, in her telling a neighbour, when she herself was going out, to look after the house.

It was next urged, that after the crime had been committed, the prisoner gave a false account of the transaction. Two examples of this have been specially founded upon. The import of one of them is, that she accounted for the old woman next morning, by saying that she had got

Burke and Hare.

Mr Cockburn

troublesome during the night, and had been kicked out of the house. The import of the other is, that she accounted for certain appearances, to Mr. Fisher, the Lieutenant of Police, by saying that a woman had lain in in the room; that the old woman was still to be seen,—and had apologized in the Vennel, for her misconduct during the night. I have no doubt whatever, that the whole of these statements are false. I admit that they were mere inventions,—fallen upon to conceal the crime. But this is not only their explanation, but their defence. She was aware of the suspected, or the guilty, trade which her husband was engaged in, and I have not a doubt that she was obliged to resort to similar deceptions every week. It was her misfortune to live in a situation in which, even when there was no idea of anything like murder, she was habitually obliged to make false statements to account for the possession of dead bodies, or to avoid the suspicion of having them. And, allowing that these falsehoods were invented in consequence of her knowing that the murder in question had been committed, they amount to nothing more, than that the deed being done, she *concealed* it,—a proceeding which might afford strong evidence against anybody else, but which affords nothing conclusive against a near relation. It may be wrong,—but where is the son who would not conceal the guilt of his father? And, of all relations, how can it be expected that the wife, whose interest, as well as her affections, are involved in his, is, merely for the sake of justice, to become the betrayer of her husband?

Then, it has been held out as decisive against her, that when Miss Gray mentioned the discovery of the body to her, she offered her money to be silent, and that her concealment would be worth £10 a-week to them, adding passionately, "*My God, how could I help it?*" Her scene with Mr. Gray, though founded upon separately by the prosecutor, was exactly of the same kind. She fell upon her knees to him, and implored him not to interfere. Now, in the *first* place, though the body had been found by this time, it had not been ascertained to have been murdered; and there is not one thing that she did, or one word that she spoke, which might not have happened exactly as it did, if a body, though innocently come by, had been found in the house. She would have been equally injured in her circumstances, and equally urgent against publicity, although nothing could have been said against her, except that there was a subject under her roof. But, in the *next* place, assuming that these were the expressions of a person conscious that a murder had been committed, and in horror for its disclosure, they are accounted for by the observation which I have already so often been obliged to make, about the natural tendency which she had to hide the delinquency of her husband. Does it go far to implicate a wife in a crime committed by her husband, that she offers money for its concealment; or, on her knees, implores a probable discoverer to be silent?

The prosecutor was farther at the pains to call your attention to the fact, that next night she followed the men to Newington. I cannot think it worth while to detain you for a moment on a thing so utterly frivolous. Mrs. Hare, who went there also, says that they went there lest the men should fall a-fighting again. But whether this reason was the true one or not, it is utterly absurd to set up this circumstance as of the slightest importance either way. If the prisoner had no accession to what was done

Addresses to Jury.

Mr. Cockburn

on the first night, it is not worth while inquiring what she did towards the disposal of the body the night after

I believe, gentlemen, that if you will ransack both your notes and your memories you will find no material circumstances, independently of those mentioned by the accomplices, against the female prisoner. Before coming to the testimony of the accomplices, I should wish you to ask yourselves, whether these circumstances form sufficient evidence against her? I apprehend that they not only don't form *sufficient* evidence, but that they form absolutely no evidence at all. I don't see one circumstance which might not have been expected to occur, although it were certain that this woman was quite innocent of all accessions to the murder, in consequence of the two facts, that she was in the situation of wife to a person whose trade she could not disclose, and whose crimes she was tempted, and perhaps bound, to conceal. Accordingly, the prosecutor *concurs* with us in thinking, that without the accomplices, he has no case. His Lordship has pretended, indeed, to argue otherwise. But his own conduct establishes what his real conviction is. It is always the duty of the public prosecutor to bring the guilty to trial when he can. He has no right to take culprits from the bar, and place them in the box unnecessarily, and, therefore, the very fact that an accomplice has been made a witness, is a proof that, in the opinion of the public accuser, he could not do without them. If the prosecutor's statement be true, these two accomplices were the property of the gibbet. Why, then, has justice been robbed of their lives? Because the Lord Advocate tells you, that their being made witnesses, was "*a necessary sacrifice*."

Both of the parties, then, are agreed that you cannot convict here except upon the testimony of these associates. Now, in so far as M'Dougal is concerned, this brings the matter to a very simple and intelligible issue. I hold these witnesses, who are thus represented to you, by the public prosecutor, as absolutely indispensable, to be not only unworthy of credit, but I hold them to be so abominable, that the necessity of claiming credit for them, pollutes all the other evidence in the case. I shall explain immediately what I mean by this. But, in the meantime, *let every word that they say be assumed to be true*. This assumption may be fatal to the other prisoner, because they say that he committed the murder with his own hands. But what is the import of their evidence, holding it all to be correct, against M'Dougal? The prosecutor himself has only been able to select two circumstances in their testimony, as decisive against her.

The first of these is, that in the forenoon she talked of her husband having got a *shot* in the house for the doctors. The flares explain that they understood by this phrase, that a person was secured to be murdered for dissection. Now, although nothing can be more atrocious than this, I don't hesitate going up to it fearlessly, and without flinching; and I maintain, that it proves nothing, except that she was aware of the intention to commit murder, and that she did not disclose it; and that this, however guilty it may make her, does not render her to be convicted as accessory of that murder. *To know of an intended murder, and to conceal it, is not, in law, equivalent to being the murderer by accession*. I have read your authoritative statements to this effect, from our most learned and practical

Burke and Hare.

Mr Cockburn

criminal lawyers, and although there had been no authority on the subject, I should submit with confidence to any jury,—who are always the judges of the degree of accession that is necessary,—that the failure, by a very near relation, to disclose an intended crime, is not much worse than its concealment by that relation after it is committed. Although, therefore, there be something inconceivably horrid in the very existence of such a phrase,—you are not to be misled by that circumstance, which, unquestionably, does not place this woman in a worse condition than she would have been in, if she had admitted in her declaration, that she knew what was to be done that night. Such an admission, whatever effect it might have had as a part of a circumstantial case, certainly would not, of itself, have involved her, legally, in all the consequences of that which she was aware of, and did not reveal.

The other circumstance is,—that when the crime was about to be actually perpetrated, *she did not interfere to prevent it*. What I have just been saying, disposes of this circumstance also. If she could conceal her knowledge of the crime, without being thereby guilty of it, of course, she is equally free of this guilt, although she did not interfere to obstruct it. But the true answer to this circumstance is,—that, in point of fact, she did interfere. She not only fled, but gave that alarm which was mentioned by Alston, and which I defy you to account for, except on the supposition that it proceeded from her.

This is all that is sworn to against her, even by the Hares. So that, assuming the whole of the prosecutor's evidence to be credible, the sum and substance of her guilt is, that *she first knew of the crime and did not disclose it*,—and that then, *after it was perpetrated in spite of all that she could do, she not only denied it, but invented false stories to hide it*. The knowledge of it beforehand, and the concealment of it afterwards, constitutes the whole of her guilt in this matter. That that guilt is great, cannot be denied. Morally, perhaps it is equal to murder,—in law, it is certainly not much beneath it. But still it is beneath it.

But, really, gentlemen, we give the prosecutor a most unnecessary and unjust advantage, when we talk of the credibility of these his necessary witnesses, and allow them to work up every circumstance according to their own pleasure. I cannot form the idea of any jury's being satisfied with *less* evidence than what the accuser thinks indispensable. Our learned friend who prosecutes here, has demonstrated by his conduct, that he is satisfied that you ought not to convict without the evidence of the associates; and thus we are absolutely driven to consider what credit is due to those witnesses. If you shall agree with me in thinking that it is an absolute sporting with men's lives, and converting evidence into a mockery, to give the slightest faith to anything that these persons may say, then we have the authority of *the public accuser himself*, for holding that you must acquit. Now, on what does these witnesses claim to credit, rest? One of them is a professional body snatcher, the other is his wife. So that, independently altogether of the present transaction, they come before you confessedly vitiated by the habits of the most disgusting and corrupting employment which it is possible to be engaged in, and one, of which the chief corruption arises from its implying, that he who practises it, has long

Addresses to Jury.

Mr. Cockburn

been accustomed to set law, feeling, and character, at defiance. Then they both confess their direct accession to this particular murder, a confession, which, if it had been made at the bar, would have for ever disqualified them from giving evidence in any Court of Justice. Not having been made at the bar, they are admissible. But since they have made the very same confession in the witness box, their credit is as completely destroyed in the one case, as it would have been in the other. Hare not only acknowledged his participation in this offence, but he admitted circumstances which aggravated even the guilt of murder. He confessed that he had sat coolly within a few feet of the body of this wretched woman, while she was expiring under the slow and brutal suffering to which his associate was subjecting her. He sat there, according to his own account, for about ten minutes, during which her dying agonies lasted, without raising a hand or a cry to save her. We who only hear this tale, shudder, and yet we are asked to believe the man who could sit by and see it. Nor was this the only scene of the kind in which they had been engaged. The woman acknowledged that she "*had seen other tricks of this kind before this.*" The man was asked about his accession to similar crimes on other occasions; but, at every question, he availed himself of his privilege, and virtually confessed, by *declining to answer*.

I know very well, that in spite of all this, they are admissible witnesses. But *why* does the law admit them? Why, just because, after they are admitted, it is the province of you, gentlemen, to determine how far they are to be believed. You are the absolute monarchs of their credibility. But, in judging of this, do not be misled by what juries are always told of those who turn King's evidence,—that they have no interest now but to speak the truth. In one sense, no man has any interest but to speak the truth. But it is notorious, that there is nobody by whom this is so universally forgotten, as by those who make a bargain for saving themselves, by betraying their associates. These persons, almost invariably hurt the interests of their new master, by the excess of their zeal in his service. They exaggerate everything,—partly from the desire of vindicating themselves, and partly to merit the reward for which they have bargained. And you will observe, that in this case, these persons stand in this peculiar situation, that so far as we know, they are still liable to be tried for similar offences. There are other two murders set forth in this very indictment, one of them committed in Hare's house, and if we may judge from what these persons say, they have been engaged in other transactions of the same kind. They came from the jail to this place to-day, and they are in jail again. Do you think it is very improbable, that when coming here, they should feel, that if this prosecution failed, public indignation would require another victim, and that nothing was so likely to stifle further inquiry as the conviction of these prisoners? The worst feature, perhaps, of their evidence is, that it is necessarily given under the feeling of this *substanting* interest.

The prosecutor seemed to think that they gave their evidence in a credible manner, and that there was nothing in their appearance beyond what may be expected in that of any great criminal, to impair the probability of their story. I entirely differ from this; and I am perfectly satisfied

Burke and Hare.

Mr. Cockburn

that so do you. A couple of such witnesses, in point of mere external manner and appearance, never did my eyes behold. Hare was a squalid wretch,—on whom the habits of his disgusting trade, want, and profligacy, seem to have been long operating, in order to produce a monster, whose will, as well as his poverty, will consent to the perpetration of the direst crimes. The Lord Advocate's back was to the woman, else he would not have professed to have seen nothing revolting in her appearance. I never saw a face in which the lines of profligacy were more distinctly marked. Even the miserable child in her arms,—instead of casting one ray of maternal softness into her countenance,—seemed, at every attack,* to fire her with intenser anger and impatience, till at last the infant was plainly used merely as an instrument for delaying or evading whatever question it was inconvenient for her to answer.

It is said that they are corroborated. Corroborated! These witnesses corroborated!—In the *first* place, I do not understand how such witnesses admit of being corroborated. If the prosecutor has a case without them, let him say so. But if he has not,—if something material must depend upon these witnesses,—it is in vain to talk of corroboration, because in truth, the thing to be corroborated does not exist. You may corroborate a *doubtful* testimony, but the idea of confirming the lies of these miscreants, is absurd. The only way to deal with them, is to deduct their testimony altogether. It is like corroborating a dream. The fiction and the reality may possibly be both alike, but this accidental concurrence does not make the one stronger than the other. But, in the *next* place, instead of being corroborated, there probably never was a case where suspicious evidence had the death-blow given to it by so many palpable contradictions. I won't attempt to go over these, because I will not impair the force of that most admirable analysis of the evidence which was given by my learned friend, the Dean. He collected—and contrasted—the various particulars in which Hare and his wife contradicted each other, and in which both were contradicted by all the credible evidence in the case. If you, gentlemen, can get the better of that fair and powerful contrast, you will do more than I can, and may convict,—if not, you cannot. My impression is, that these witnesses—who confessedly need corroboration—have not only not obtained it, but have been met by inconsistencies, sufficient to have cast doubts on testimony otherwise pure. But the simple and rational view for a jury to take, is, that these indispensable witnesses are deserving of *no* faith in any case, and that the idea is shocking of believing them, to the effect of convicting in a case that is capital. The prosecutor talks of their being sworn! What is perjury to a murderer? The breaking of an oath to him who has broken into "the bloody house of life"!

His Lordship's last appeal is to the prisoners' declarations. As usual with our public prosecutor, he has studiously gone through these parts of the proceedings, and has culled every statement, and every word, which could be made to bear against the accused, and concludes, that so much falsehood could not have been reared by any innocent man against himself. I have not the slightest doubt that all this was most fairly done, and I only

* The child was very ill of whooping-cough.—*Ed*

Addresses to Jury.

Mr. Cockburn

differ from his Lordship as to the result. These miserable declarations are always the last refuge of the prosecutor in a doubtful case, insomuch, that whenever juries see that they are much relied upon, they may, from that one fact, be perfectly certain that the accuser is uneasy about his other evidence. You are aware what a declaration is. A person accused is taken, generally under all the agitation created by the first suspicion, into a room, where he finds a Magistrate, and a prosecutor, and two Sheriff's-officers, for witnesses, and there, deprived of all assistance or advice, he is asked to account for every circumstance, whether real or supposed, which seems to render his conduct suspicious. Happy is he if this operation be repeated only once, twice,—or even thrice. He is liable to have it renewed day after day,—*even after his committal for trial*, till his declarations, as here, may amount to five or six; and all this matter is accumulated against him, for the day of trial, when it is critically examined, and brought elaborately forward to fill up all the chinks of all the rest of the evidence. I assume everything to be quite fair on the part of the Magistrates and of the accuser. I know that the man is always warned not to criminate himself, and I know that he need not answer unless he likes, but I also know, that if he does not answer, his very silence is invariably construed against him, and that, although truth is always the safest course it is one of which the safety is not always seen, even by innocent men. There is an irresistible temptation to account for present appearances, which makes either silence or truth extremely rare. A man of great firmness, or of great experience in such scenes, may have sense to hold his tongue, or courage to speak the truth, the whole truth, and nothing but the truth;—but, a man of any weakness, or who sees that he has been caught in ugly circumstances, and who, from his very consciousness of innocence, is naturally burning for immediate liberation, has recourse, almost to a certainty, to any statement, whether true or false, which seems to be convenient at the moment. He thinks of nothing but the present instant, and never dreams of the curious web that is to be weaved round him, out of his own declarations, at his trial. Whether this accounts for the fact or not, I cannot say, but I hold it to be an unquestionable fact, that the declarations of the innocent are very nearly as false as those of the guilty. I have no doubt, therefore,—though I must confess, that I have not been at the pains to study them,—that the declarations in this case are crammed with inaccuracies, and probably with lies. You, of course, will give what effect to this you think proper, but I submit to you, that there never was a case in which the circumstance was of less weight. Declarations are great favourites with accusers, but I have long observed a growing disregard of them on the part of juries, and they are particularly useless in any question like this, where the maker of them, though he may be innocent of the crime for which he is tried, was unquestionably guilty of other crimes which made truth equally inconvenient.

I have only, in conclusion, one other word to say to you on a subject which has been often alluded to from all quarters, in the course of this long and singular investigation. Everybody admits that there never was a case tried, in which the prisoners are more likely to suffer from prejudice. Their traffic was revolting, even when conducted lawfully. When con-

Burke and Hare.

Mr Cockburn

ducted under the suspicion of its being accompanied by theft or murder, it is scarcely possible to get the mind, even of a jury, subdued to the cool consideration of the legal evidence. In addition to all this, this question has formed the subject of universal conversation, and the whole story, and even the pretended evidence, have been fully discussed in the public prints. The result of this is, that there is probably not one of you, gentlemen, who came into Court to-day, without a strong impression against the prisoners. You have been so powerfully warned against mistaking this impression for that conviction arising from the evidence, on which alone you ought to decide, that I shall only make one other observation on the subject. It is, that the law supplies you with a clear rule for your guidance, in all such cases. The prosecutor is bound to prove his case; and if he fails, no matter from what the failure may proceed,—the prisoner is entitled to an acquittal. Nay, more, if there be a doubt,—I mean a rational doubt,—the prisoner is entitled to the benefit even of this.

Can it possibly be said, that there is no rational doubt in this case? So far from it, that I am perfectly satisfied, that if M'Dougal had been under trial for an ordinary murder, of which the public had taken no particular charge, no prosecutor would have seriously asked for a verdict against her upon this proof. But what she is endangered by, is, the cry of the public for a victim. I need scarcely remind you, that this is a cry to which you, who are set apart from the prejudices of the public, and are sworn to look to the legal evidence alone, must be completely deaf. Let the public rage as it pleases. It is the duty, and the glory, of juries, always to hold the balance the more steadily, the more that the storm of prejudice is up. The time will come when these prejudices will die away. In that hour, you will have to recollect whether you this day yielded to them or not,—a question which you cannot answer to the satisfaction of your own minds, unless you can then recall, or at least are certain that you now feel, legal grounds for convicting this woman, after deducting all the evidence of the Hares, and all your extrajudicial impressions. If you have such evidence,—convict her. If you have not,—your safest course is to find that the libel is not proven.

The Lord Justice-Clerk's Charge to the Jury.

His Lordship began his address, by stating, that it afforded him, as well as his brethren on the Bench, the greatest satisfaction, to think, that in a case of so peculiar a nature, and involving, as it did, the life or death of the prisoners, their defence had been conducted by the most eminent counsel at the bar, and with a zeal and consummate ability which, in all his Lordship's experience, he had never seen surpassed.

His Lordship next expressed himself perfectly confident, that in determining on the evidence laid before them, the jury would divest their minds of everything they might have read or heard, having the slightest tendency to excite a prejudice against the prisoners at the bar. The fate of these persons fell to be determined by the evidence which had been led since the jury were placed in the box, without regarding, and laying aside altogether,

Charge to the Jury.

Lord Justice-Clerk

the statements or discussions that might have previously met their eye. The case, too, was to be viewed entirely apart from any of the popular prejudices or notions that were afloat, and the evidence examined and weighed, as scrupulously and strictly, as if the crime charged were one unattended with the extraordinary circumstances which had excited so intense an interest in all classes of people.

In reference to the evidence adduced, his Lordship characterized it as partly *circumstantial*, and partly *direct*, and observed, that it was upon a careful and deliberate examination of the whole, that the jury must give their verdict on the guilt or innocence of the pannels. The *circumstantial* evidence adduced of the pannels' guilt, consisted of a long train of facts and circumstances, tending to establish that they were concerned as actors, or art and part, in the murder labelled, while the *direct* evidence, again, consisted entirely of the evidence of Hare and his wife, the associates in the crime. It would, therefore, be proper to look at the case, *first*, in reference to the circumstantial proof adduced, and, *secondly*, as it appears to stand on the evidence of these two persons. It was only upon a fair and impartial consideration, first of each separately, and then of both combined, that a just verdict could be pronounced.

After these preliminary observations, and stating to the jury, that in regard to the *circumstantial evidence*, it was to be taken as a whole, and not to be broken down or separated into distinct or isolated parts, and after laying it down, that the jury must, first of all, be satisfied that the woman Docherty, mentioned in the indictment, lost her life by violence,—without evidence of which, there was no case before them,—the Lord Justice-Clerk entered into a careful and minute examination of the whole proof, so far as it consisted of the circumstantial evidence adduced, and commenting, as he went along, on the various facts established, as they appeared to bear on the *corpus delicti*, the guilt of the prisoners, or the arguments urged in explanation of their conduct by their counsel on their behalf. His Lordship then stated, that it was the province of the jury to draw their own conclusion from the evidence which he had thus brought under their view.*

His Lordship next proceeded to notice the account of the matter under investigation, as given by the pannels in their declarations before the Sheriff; dissenting from the views thrown out by the counsel for the prisoners on this subject, and giving it as his opinion, that the admissions recorded in those declarations must, as far as they went, be held as important ingredients in the proof. He observed, that the weight due to the declarations of Burke, could not be weakened by the fact, that *five* different declarations had been taken from him,—as the *two* that had been read, of the 3d and 10th of November, related solely to the alleged murder of the woman Docherty, and had no connection with any other charge. Before being asked a single question, both prisoners would be told by the Sheriff,

* We are obliged to content ourselves with the above general statement of the Lord Justice-Clerk's speech on *this part of the case*, as, without quoting nearly the whole evidence led, and already given in the previous part of this trial, we should do injustice to his Lordship's observations; nor would their bearing be properly understood.—*Original Note.*

Burke and Hare.

Lord Justice-Clerk

that they were charged with the crime now under investigation, and were not bound to answer any questions that might be put to them on the subject. It was certified in the usual manner, and must be held proved, that the declarations of the prisoners were emitted freely and voluntarily, and that they were in their sound mind and sober senses at the time. Such declarations, it was, and had long been firmly established in the law of Scotland, were legitimate evidence. The jury were, therefore, not only warranted, but bound to take them into view, as an important and unexceptionable part of the case. His Lordship then proceeded to comment on the various, improbable, and contradictory statements given by the prisoners in their declarations, and particularly in those of Burke, the account given by them of their proceedings, appearing to his Lordship as utterly incredible, and beyond all human belief, while the statements themselves were established by witnesses, against whose testimony no objection had been attempted, to be absolutely false, in every particular of importance.

His Lordship then proceeded to the consideration of the *direct* evidence of the case, as brought out in the testimony of Hare and his wife, and addressed the jury, in substance, as follows —The remarks of the prisoners' counsel, on this part of the case, render it necessary for me shortly to explain to you the law with regard to the admissibility of *socii* in guilt, and the position in which persons in that predicament stand, in relation to their credibility. As to the admissibility of such persons, it must be perfectly obvious, that, were their evidence to be entirely rejected, the purposes of justice would often be completely defeated in occult crimes, which are, generally, the most heinous. It is true, that the persons in question have admitted a concern in the perpetration of the crime charged in the indictment, it may be conceded, morally speaking, that they are equally guilty with the prisoners at the bar, or, if that be possible, even more so. Still it is entirely out of the question, to go into the idea maintained for the prisoners, that they are, on that account, to be considered as *inadmissible* or incompetent witnesses. If this objection was good, it would be a compendious way of getting rid of the evidence of every *socius criminis* who admits his concern in a crime. In point of form, indeed, this argument cannot be maintained, since the witnesses have been actually received and examined, under an implied reservation, of course, as to their credibility. When it is argued, however, that these persons, by acknowledging themselves to be murderers, and, consequently, the vilest of human beings, are, on this ground alone, totally unworthy of credit, and that their testimony is to be entirely laid aside, however consistent in itself, and how much soever it may be corroborated and confirmed by the evidence of other witnesses, to whom no exception either is or can be taken,—the counsel for the prisoners, it is obvious, are just endeavouring to gain, by indirect means, that which the law denies them directly. The persons whose evidence is in question, though in the ordinary and popular sense, they may be considered as *de facto* infamous, cannot, on that account, be altogether rejected. There must be a conviction, by a competent legal tribunal, and the verdict of a jury, before even the worst of mankind can be placed in this predicament. They must be infamous *de jure*, and inadmissible, previous to their appearing in Court, and cannot become so by any examina-

Charge to the Jury.

Lord Justice-Clerk

tion, or investigation into their private conduct, before you. Most undoubtedly such persons are not to be received on the same footing as witnesses standing in a different situation, still, however, though their evidence may be liable to the greatest suspicion, and may be subjected to a more severe and strict examination than in the ordinary case, you must hear what they have to say.

It has been further argued, that Hare and his wife were placed in the situation of being themselves exposed to be tried for other charges of murder, and, indeed, for the other two charges contained in the present indictment, hence, that they have a clear interest to throw the blame of the actual perpetration of the crime on the prisoners, and represent themselves as comparatively or completely innocent. But here, gentlemen, I feel it necessary to state it to you, as the decided opinion both of myself and my brethren now present, that whatever may be the case with regard to other murders, or other crimes, the witnesses in question are as fully protected by the law, in relation to all those contained in the present indictment,—that is to say, against either trial or punishment for them,—as if they had been entirely free from any concern in their perpetration. These persons were called on to give evidence on the whole of the charges contained in the indictment. Eventually, and at a subsequent diet, they *may* still be examined in relation to the other two, and, therefore, so far as the plea of interest is rested on the alleged danger to which they are exposed, it is entirely and thoroughly without foundation. The public faith has been pledged to these persons, wicked and criminal as they may be, and certainly are, and it must, at all hazards, be kept sacred. As to their *credibility*, however, that, as I have already stated, is a totally different matter. If their evidence be inconsistent, and at variance with itself, contradicted by other, and entirely unexceptionable, testimony, or standing alone, and unsupported by collateral corroborating circumstances,—it is for you to judge of all this, and give such weight to the story told by them, as, under the whole circumstances, appears to be rational and just. In estimating the degree of credibility due to persons of this description, you will keep in remembrance the manner in which they gave their evidence, and their whole demeanour and behaviour, while under examination. You will attend, likewise, in particular, to the story told by these two persons, and observe whether they differ from, or contradict each other, with regard to circumstances of importance, which they had the same or equal opportunities of observing. I do not see, however, that any other or different rules can, or ought to be applied, in comparing the evidence of the two witnesses in question, than is done in the ordinary case. I need scarcely observe, that slight variations or discrepancies in the account given, even of ordinary occurrences, afford no proof that the main circumstances are not true. No two individuals, however disinterested and impartial, will give precisely the same account of such occurrences. The difference, perhaps imperceptible, in the opportunities for accurate observation, accidental absence of mind, inattention at the moment, or want of recollection afterwards, are quite sufficient to account for this, without supposing any wilful departure from the truth. Indeed, you must be quite aware, that if a false account of a transaction is intended to be

Burke and Hare.

Lord Justice-Clerk

given, there will be little difficulty in concerting a story that will be perfectly consistent on the face of it, and in which there will be no discrepancy whatever. Slight differences, therefore, in unimportant particulars, are a proof rather of the absence of previous concert or collusion, than otherwise. And if this be true with regard to ordinary occurrences, much more must it hold in regard to those agitating and horrid circumstances which have been the subject of our investigation at this time.

After some other general remarks, his Lordship proceeded to the consideration of the testimony of the two witnesses, a part of which he read to the jury, commenting on its import, and the effect due to it, *first*, in reference to the story told by the witnesses themselves, and *afterwards* to the facts established by the other and unexceptionable witnesses that had been examined, and in the course of his observations, he stated, that there was some difficulty in reconciling the account of the actual perpetration of this murder, as given by these witnesses, to that detailed by Alston, as to what he heard passing in Burke's house,—though it would be for the jury to consider, whether allowance should not be made for the state in which Mrs Hare and M'Dougal were, when in the passage. In concluding his charge on this part of the case, his Lordship remarked that if the woman Docherty had, according to the prisoner's account of the matter, died a natural death, or lost her life by accident, it surpassed all human belief that the two witnesses in question should not only attempt to swear away the life of the prisoners; but voluntarily, and without any adequate or conceivable cause, lay upon themselves a load of guilt, by admitting their participation in the crime charged, which they must bear during the whole course of their future lives. The weight due to the testimony of these associates, however, lay entirely with the jury, who, no doubt, would decide on a just view of all the circumstances as brought out in the evidence adduced.

His Lordship continued as follows —Before finally leaving this painful case, I must address to you a few words with regard to the situation in which the prisoner, M'Dougal, stands. It is not in evidence that she took any part in the *actual* perpetration of the crime; but the question remains, and if answered in the affirmative, will be equally fatal to her as if she had done so,—namely, whether she was an accessory, and therefore, to be held in law, as art and part guilty along with the other prisoner. Accession to a crime may take place before the fact, as well as at the moment the crime is committing. It may likewise be *inferred*, from the conduct of the party after the fact. And if you are to believe the evidence which you have heard, I am much afraid there are but too strong grounds for concluding that the female pannel at the bar has been guilty of accession to the crime under investigation, whether you consider her conduct before or after the fact, or while it was perpetrating. It is impossible to conceive for one moment, that under all the circumstances of the case, the pannel, M'Dougal, could be ignorant of the purpose for which this wretched woman, Docherty, was brought to the house. The state in which Burke and she appear to have lived,—their brutal and dissipated habits,—make it impossible to believe that either of them kept this woman in their house, from the humane or charitable motives which

Charge to the Jury.

Lord Justice-Clerk

they professed to feel, and affected to show towards that unfortunate creature On one occasion, it would appear, indeed, from the evidence of Gray's wife, that M'Dougal actually opposed the woman's proposal of going out of the house The manner, too, in which she communicated the fact to Mrs Hare, of this poor woman being in their clutches, viz, that they had got a *shot* in the house, shows distinctly her complete knowledge of what was in view, and implicates her morally, as well as legally, in the guilt that afterwards ensued Again, as to her accession during the perpetration of the crime, this much appears, according to the evidence of Hare and his wife, that both M'Dougal and Mrs. Hare were in the room, at least (whether on the bed, as Hare states, or standing between the bed and the door, as his wife swears, seems immaterial), when Burke placed himself on the body of the woman, and that upon hearing the first "screech" of the woman, they both *flew*, as Mrs Hare expresses it, to the passage, where they remained till the door was opened By this time, the crime had been accomplished, and the body thrust below the bed These two women return to the room, but ask no questions, although they must have missed the old woman, whom indeed they had seen a few minutes before Their flying into the passage, and remaining there, can in no respect be considered as substantially different from actual presence; or rather perhaps it ought to be viewed as making more strongly against this prisoner In this way, at least, she must have been completely at liberty to call for assistance, and prevent the final perpetration of the crime, while it takes away the possibility of pretending, as might have been done, if she had remained in the room, that she was compelled to witness the deed, and dared not take measures to prevent it; as it is sworn that she and Mrs Hare had previously interferred to prevent Burke and Hare from fighting Then, as to her subsequent conduct, in relation to the crime, it is equally, and if possible, still more unequivocally established, because it does not depend on the evidence of Hare and his wife alone I need not detail all the circumstances here referred to, but you will not fail to recollect, among others, her share in the concealment of the dead body,—the part she took in its transportation and sale, by accompanying the other prisoner and Hare to Surgeons' Square and Newington,—the falsehoods she uttered in endeavouring to account for the disappearance of Docherty;—her attempts to bribe to silence the wife of Gray, by an offer of money, and the prospect of putting her husband in the way, if they would be quiet, of his being worth £10 a-week through the prisoners' means.

You have heard certain legal authorities appealed to by the prisoners' counsel; but I confess, those appear to me to be in no respect applicable to the circumstances of the prisoner, M'Dougal's, case. With regard, in particular, to the case of Taylor and Smith, which has been chiefly relied on, it may be proper to read the distinct account of it, given by Mr. Burnett in his work (p. 270). After observing that it was a case of *nicety*, the circumstances are thus stated:—"A girl of the name of *Kelly*, with whom Smith had been connected, having met him one evening, put into his hands a child, (of which he was probably the father), then between two or three months old. *Smith* carried away the child, and laid it down in a garden, having previously used such violence against it, as he thought had deprived

Burke and Hare.

Lord Justice Clerk

it of life. After this, he calls on the other prisoner *Taylor*, a young man of about seventeen years of age, an apprentice to a surgeon, informs him of having got a child, (whether he added *dead* or *alive*, did not appear), and that he would give him the body for dissection. There was no proof of any previous concert between them in this business. *Taylor* made no objection to the proposal, and accompanied *Smith* to the place where the child had been left, in order to receive the body. On coming to the place, the child, to the surprise, as it appeared, of *both*, was heard to cry, on which according to the account given by *Smith* in his declaration, having asked *Taylor* the best way of destroying it, he, in consequence of his directions, deprived it of life, by squeezing its throat, and holding its head under water, while, according to the account given by *Taylor*, *Smith* of himself, and without any directions from him, killed the child. So it was, however, the child was killed, *in the presence of Taylor*, who, it appeared, made no objections, or took any means to prevent it, by giving the alarm, or otherwise, on the contrary, he immediately after carried away the body to his master, the surgeon's house. On informing his master how he came by it, he refused to have anything to do with the body, or to allow it to remain in his house, on which *Taylor* carried it away, and concealed it in a cellar possessed by *Smith's* brother. The body was not found till about two weeks thereafter, while, in the meantime, *Smith* absconded.

"Both were afterwards brought to trial as *guilty actors, or art and part in the murder*. The libel having of course been found relevant, the proof, so far as applied to *Taylor*, amounted to *his being present at the murder, using no means to prevent it, and afterwards being found in possession of the body*, for, as to *Smith's* account of his having directed him how to kill the child, that could be no evidence against *Taylor*.

"The Counsel for the Crown maintained, that the circumstances above mentioned were sufficient to infer *art and part* in the murder.—'Here (it was argued), is a murder committed, the dead body is found in the possession of the prisoner *Taylor*. This throws the *onus* upon him of proving how he came by it.' His account is,—'I came to the place, saw the child murdered, gave no alarm, did not even disapprove of it; and afterwards carried away the dead body for the purpose of dissection. Do not these circumstances amount to a full and complete *accession* to the murder?' It was, on the other hand maintained, that as the proof against *Taylor* amounted only to *mere presence* at the time, without any advice, aid, or assistance in the act; without any previous concert with the murderer, or even knowledge that such a thing was intended by him; on the contrary, as he, (*Taylor*.) *came there*, conceiving the child to be dead, and with a view merely to carry away the body for the purpose of dissection, his *accidental and unexpected presence* at the murder, ought not, in these circumstances, to infer *art and part* in the deed, while his having the body afterwards in his possession, and concealing the murder, were neither circumstances, *per se*, nor, when coupled with the *presence*, that could in this case infer *art and part*.

"The Court seemed to be of opinion, that in the general case, *presence* at a murder, joined to *after concealment*, and being *in possession of the dead body*, were circumstances sufficient to infer *art and part*, but it

Charge to the Jury.

Lord Justice-Clerk

was left to the jury to consider, whether the *mere presence* here, at the murder of a *child*, an act so *instantaneous* in its nature, as to leave little time to the bystander, either for reflection, or the giving an alarm, while no previous concert or knowledge of the deed was proved, or even alleged, and the possession of the body afterwards being by a *surgeon's apprentice*, who might innocently be brought into that situation, ought, in such a case, to infer *art and part*. The jury convicted *Smith*, but acquitted *Taylor*."

As to this case, I shall content myself with stating that while I concur in the law, as laid down by the Court, I must presume to dissent from the verdict of the jury. But, at any rate, it is obvious, that this case of *Taylor*, is a totally different one from the present. According to Mr. Burnett's statement, the proof, so far as applicable to *Taylor*, amounted to his being present at the murder,—using no means to prevent it,—and afterwards being found in possession of the body. There neither, however, was, nor could be, in that case, any previous assistance or co-operation in relation to the deed; it is certain *Taylor* had no previous knowledge of any intention on the part of *Smith* to commit the murder, and even that person appears to have believed that it had been already accomplished. It is impossible, therefore, to hold the two cases as analogous, and if you believe the evidence laid before you, of the prisoner's whole conduct, you must, in my opinion, hold her to be guilty, *art and part*, along with *Burke*. In determining this question, you will not fail to keep in view the statements made in the declarations of this prisoner. She there not only denies that she knew of any dead body being in the house, but positively declares that she did not see the woman *Docherty* at all, after two o'clock on the Friday, and, in particular, she did not see her in the house on the Friday night,—that is, on the night of the murder. In short, her case is totally different from that of *Taylor*.

His Lordship concluded his charge to the jury, with observing, that he now left the case in their hands, satisfied they would return such a verdict as justice required. If they had doubts,—reasonable and rational doubts on the subject of the prisoners' guilt, on either of them,—they were bound to give them the benefit of these doubts, without allowing their own minds to be influenced or carried away by any prejudices or popular clamour that might exist against the pannels. On the other hand, if the jury were, in their consciences, satisfied of the guilt of the prisoners, they must return a verdict accordingly.

Verdict.

The jury retired at half-past eight o'clock in the morning, and, after an absence of about fifty minutes, returned the following Verdict, *viva voce*, by their chancellor, JOHN M'FIE, Esq. —

The jury find the pannel, William *Burke*, GUILTY of the *third charge in the Indictment*; and find the Indictment NOT PROVEN against the pannel, Helen M'Dougal.

LORD JUSTICE-CLERK—*Gentlemen of the jury*,—While I return you the thanks of the Court for the unwearied pains and attention you have

Burke and Hare.

Lord Meadowbank

bestowed on this case, it must be satisfactory for you to know, that it is the opinion of the Court, that your verdict appears to be perfectly well founded. Entertaining, as you did, doubts of the guilt of the female prisoner, you gave her the benefit of those doubts.

LORD ADVOCATE—*My Lord Justice-Clerk*,—I beg leave to move your Lordship for the judgment of the Court.

LORD JUSTICE-CLERK—*My Lord Meadowbank*,—It is your Lordship's duty now to propose the sentence to follow upon this verdict.

LORD MEADOWBANK—*My Lord Justice-Clerk*,—After a trial of an unprecedented nature,—of nearly unexampled duration, having been protracted in length to almost twenty-four hours,—and during the whole of which time the minds of your Lordships have been kept upon the utmost stretch of exertion, it would be unpardonable for me, in discharging the painful duty that has devolved upon me, to think of resuming, at length, the appalling circumstances which, during the course of the proceedings, have been laid in evidence before the Court and the public.

At the same time, however, it is impossible for me, in discharging this part of our duty, not to advert, in a single sentence, to that most extraordinary,—that most sanguinary and atrocious system, which your Lordships feel has been developed and established, beyond all question, by the clearest evidence that has ever been divulged in a Court of Justice.

My Lords, I am confident, that although speaking in the presence of your Lordships, so much better instructed than myself, and so able to correct me were I in error, there is no chance of my being contradicted, when I say, that in the history of this country,—nay, in the whole history of civilized society,—there never has been exhibited such a system of barbarous and savage iniquity, or anything at all corresponding in atrocity, to what this trial has brought to light.

Individual murders have been committed,—crimes of all descriptions have been perpetrated, more arising from the spirit of revenge, or the lure of plunder, or the other vindictive and sordid passions to which human nature is exposed; but that there should, at this time of day,—in this country, (which we had all of us hoped was in some measure free from the reproach of most of the more odious and more heinous species of crimes,) have been found to be regularly organised and established a system of cold and premeditated murder, such as we have now heard of, was, I am sure, beyond the imaginations of your Lordships to have conceived. Had one individual been found so utterly divested of all human feeling, as to have been guilty of the offences here brought to light, your Lordships might well have been amazed and horrified. But it is almost beyond conception, to imagine that there should have existed, in this great and populous city, not one individual only, but apparently a number of individuals, both male and female, leagued and combined together, for the purpose of sacrificing their unoffending fellow-citizens, for the sordid purpose of selling their bodies, after they had been murdered, for a price, as inexpressibly horrible, and, to one, feeling for the character of his country, in the last degree, humiliating. It would be in vain that I should search for words to express the ideas which the general announcement of such a system of horrible atrocity, must necessarily create.

Burke and Hare.

Lord Meadowbank

exciting prejudices against the individual at the bar, or for harrowing up the feelings with which I trust he is now impressed

But really, when a system of such a nature is thus developed, and when the actors in this system are thus exhibited, it appears to me that your Lordships are bound, for the sake of public justice, to express the feelings which you entertain of one of the most terrific, and one of the most monstrous delineations of human depravity, that has ever been brought under your consideration. Nor can your Lordships forget the glowing observations which were made from the bar, in one of the addresses on behalf of the prisoners, upon the causes which it was said have, in some measure, led to the establishment of this atrocious system. These, alone, in my humble opinion, seem to require that your Lordships should state roundly, that with such matters, and with matters of science, we sitting in this place, and deciding on such questions as that before us, have nothing to do. It is our duty to administer the law as handed down to us by our ancestors, and enacted by the Legislature. But God forbid that it should ever be conceived, that the claims of speculation, or the claims of science, or the claims of philosophy, should ever give countenance to such awful atrocities as the present, or should lead your Lordships, or the people of this country, to contemplate such crimes with apathy or indifference.

With respect to the case before us, your Lordships are aware, that the only sentence which we can pronounce, is the sentence of death. The highest law has said,—“Thou shalt not kill,—thou shalt do no murder,” and in like manner, the law of Scotland has declared, That the man guilty of deliberate and premeditated murder, shall suffer death. The conscience of the prisoner must have told him, when he perpetrated this foul and deliberate murder, alike violating the law of God and the law of man, that he thereby forfeited his life to the laws of his country. Now that detection has followed, therefore, the result cannot be by him unexpected; and I have therefore only farther to suggest to your Lordship, that the prisoner be detained in the Tolbooth of Edinburgh, till the 28th day of January next, when he shall suffer death on a gibbet by the hands of the common executioner, and his body thereafter be given for dissection.

LORD MACKENZIE—*My Lord Justice-Clerk*,—I have nothing to say further, than that I concur in thinking, that the punishment proposed to the Court by his Lordship, is the only punishment that can be pronounced

Addresses to the Prisoners and Sentence.

LORD JUSTICE-CLERK—*William Burke*, You now stand convicted, by the verdict of a most respectable jury of your country, of the atrocious murder charged against you in this indictment, upon evidence which carried conviction to the mind of every man that heard it, in establishing your guilt of that offence. I agree so completely with my brother on my right hand, who has so fully and eloquently described the nature of your offence, that I will not occupy the time of the Court in commenting on it, farther than by saying, that one of a blacker description,—more atrocious in point

Address to the Prisoners and Sentence.

Lord Justice-Clerk

of cool-blooded deliberation, and systematic arrangement, and where the motives were so comparatively base,—never was exhibited in the annals of this, or of any other Court of Justice. I have no intention, sir, to detain this audience, by repeating what has been so well expressed by my brother. My duty is of a different nature, for if ever it was clear, beyond all possibility of a doubt, that the sentence of a Criminal Court will be carried into execution, in any case, yours is that one,—and you may rest assured, that you have now no other duty to perform on earth, but to prepare, in the most suitable manner, for appearance before the Throne of Almighty God, to answer for this crime, and for every other that you have been guilty of during your life. The necessity of repressing offences of this most extraordinary and alarming description, precludes the possibility of your entertaining the slightest hope that there will be any alteration upon your sentence. In regard to your case, the only doubt that has come across my mind, is, whether, in order to mark the sense that the Court entertains of your offence, and which the violated laws of the country entertain respecting it, your body should not be exhibited in chains, in order to deter others from the like crimes in time coming. But, taking into consideration that the public eye would be offended with so dismal an exhibition, I am disposed to agree that your sentence shall be put in execution in the usual way, but accompanied with the statutory attendant of the punishment of the crime of murder, viz.—that your body should be publicly dissected and anatomized. And I trust, that if it is ever customary to preserve skeletons, yours will be preserved, in order that posterity may keep in remembrance your atrocious crimes. I would entreat you to betake yourself immediately to a thorough repentance, and to humble yourself in the sight of Almighty God.—Call instantly to your aid the ministers of religion, of whatever persuasion you are,—avail yourself, from this hour forward, of their instructions, so that you may be brought, in a suitable manner, urgently to implore pardon from an offended God. I need not allude to any other case than what has occupied our attention these many hours; you are conscious in your own mind, whether the other charges that were exhibited against you yesterday morning, were such as might be established against you or not,—I refer to them, merely for the purpose of again recommending that you may devote the few days that you are on earth, to imploring forgiveness from Almighty God.

His Lordship then pronounced sentence of death in the usual form, and the sentence having been recorded, and signed by the judges, it was read aloud as follows.—

THE LORD JUSTICE-CLERK, and LORDS COMMISSIONERS OF JUSTICIARY, in respect of the verdict before recorded, do decree and adjudge the said William Burke, pannel, to be carried from the bar, back to the Tolbooth of Edinburgh, therein to be detained, and to be fed upon bread and water only, in terms of an Act of Parliament passed in the twenty-fifth year of the reign of His Majesty King George the Second, entitled “An Act for preventing the horrid crime of murder,” until Wednesday, the 28th day of January next to come, and upon that day to be taken forth of the said Tolbooth to the common place of execution, in the Lawnmarket of Edinburgh, and then

Burke and Hare.

Lord Justice-Clerk

and there, between the hours of eight and ten o'clock before noon, of the said day, to be hanged by the neck, by the hands of the common executioner, upon a gibbet, until he be dead, and his body thereafter to be delivered to Dr Alexander Monro, Professor of Anatomy in the University of Edinburgh, to be by him publicly dissected and anatomized, in terms of the said Act, and ordain all his moveable goods and gear to be escheat and inbrought to his Majesty's use, which is pronounced for doom And may Almighty God have mercy on your soul

LORD JUSTICE-CLERK—*Helen M'Dougal*, The jury have found the libel against you *not proven*,—they have not pronounced you *not guilty* of the crime of murder charged against you in this indictment. You know whether you have been in the commission of this atrocious crime I leave it to your own conscience to draw the proper conclusion I hope and trust that you will betake yourself to a new line of life, diametrically opposite from that which you have led for a number of years.

The following interlocutor was pronounced.—

The Lords assoilzie the pannel *Helen M'Dougal*, *simpliciter*, and dismiss her from the Bar.

The Court then rose.

APPENDICES.

Appendix I.

APPENDIX I.

THE CONFESSIONS OF BURKE

(From the EDINBURGH ADVERTISER, 6th February, 1829)

I

THE OFFICIAL CONFESSIONS

The Lord Advocate having considered it proper that the public should be put in possession of these confessions, they were accordingly transmitted by the sheriff, along with the following letter, to the Lord Provost —

Sheriff's Office, Edinburgh, Feb 5, 1829

My Lord Provost—As it is now fully understood that all proceedings of a criminal nature against William Hare have terminated, it has appeared to the Lord Advocate that the community have a right to expect a disclosure of the contents of the confessions made by William Burke after his conviction. I have, therefore, been directed to place those confessions in your Lordship's hands with the view to their being given to the public, at such a time, and in such a manner, as you may deem most advisable.

Your Lordship is already aware that the first of these confessions was taken by the sheriff-substitute, on the 3d of January last, in consequence of Burke having intimated a wish to that effect. The second was taken on the 22d of the same month, a few days before Burke's execution, and in order to give it every degree of authenticity, Mr Reid, a Roman Catholic priest, who had been in regular attendance on Burke, was requested to be present.

It may be satisfactory to your Lordship to know, that in the information which Hare gave to the sheriff on the 1st December last (while he imputed to Burke the active part in those deeds which the latter now assigns to Hare), Hare disclosed nearly the same crimes in point of number, of time, and of the description of persons murdered, which Burke has thus confessed, and in the few particulars in which they differed, no collateral evidence could be obtained calculated to show which of them was in the right.

Your Lordship will not be displeased to learn, that after a very full and anxious inquiry, now only about to be concluded, no circumstances have transpired, calculated to show that any other persons have lent themselves to such practices in this city, or its vicinity, and that there is no reason to believe that any other crimes have been committed by Burke and Hare, excepting those contained in the frightful catalogue to which they have confessed.

In concluding, I need hardly suggest to your Lordship the propriety of not making those confessions public until such time as you are assured that Hare has been actually liberated from jail—I have the honour to be, my Lord, your Lordship's most obedient humble servant,

AN DUFF

The Right Hon. the Lord Provost, &c &c

Burke and Hare.

CONFESSIONS OF BURKE IN THE JAIL

Present—Mr. George Tait, Sheriff-substitute, Mr Archibald Scott, Procurator-fiscal, Mr. Richard J Moxey, Assistant Sheriff-clerk

Edinburgh, 3d January, 1829

Compeared William Burke, at present under sentence of death in the jail of Edinburgh, states that he never saw Hare till the Hallow-fair before last (November, 1827), when he and Helen M'Dougal met Hare's wife, with whom he was previously acquainted, on the street; they had a dram, and he mentioned he had an intention to go to the west country to endeavour to get employment as a cobbler, but Hare's wife suggested that they had a small room in their house which might suit him and M'Dougal, and that he might follow his trade of a cobbler in Edinburgh, and he went to Hare's house, and continued to live there, and got employment as a cobbler

An old pensioner, named Donald, lived in the house about Christmas, 1827; he was in bad health, and died a short time before his quarter's pension was due that he owed Hare £4; and a day or two after the pensioner's death, Hare proposed that his body should be sold to the doctors, and that the declarant should get a share of the price Declarant said it would be impossible to do it, because the man would be coming in with the coffin immediately, but after the body was put into the coffin and the lid was nailed down, Hare started the lid with a chisel, and he and declarant took out the corpse and concealed it in the bed, and put tanner's bark from behind the house into the coffin, and covered it with a sheet, and nailed down the lid of the coffin, and the coffin was then carried away for interment That Hare did not appear to have been concerned in any thing of the kind before, and seemed to be at a loss how to get the body disposed of, and he and Hare went in the evening to the yard of the College, and saw a person like a student there, and the declarant asked him if there were any of Dr Monro's men about, because he did not know there was any other way of disposing of a dead body—nor did Hare The young man asked what they wanted with Dr Monro, and the declarant told him that he had a subject to dispose of, and the young man referred him to Dr Knox, No 10 Surgeon Square; and they went there, and saw young gentlemen, whom he now knows to be Jones, Miller, and Ferguson, and told them that they had a subject to dispose of, but *they did not ask how they had obtained it*, and they told the declarant and Hare to come back when it was dark, and that they themselves would find a porter to carry it Declarant and Hare went home and put the body into a sack, and carried it to Surgeon Square, and not knowing how to dispose of it, laid it down at the door of the cellar, and went up to the room, where the three young men saw them, and told them to bring up the body to the room, which they did; and they took the body out of the sack, and laid it on the dissecting-table. That *the shirt was on the body, but the young men asked no questions as to that*, and the declarant and Hare, at their desire, took off the shirt, and got £7 10s Dr Knox came in after the shirt was taken off, and *looked at the body*, and proposed they should get £7 10s, and authorised Jones to settle with them, and *he asked no questions as to how the body had been obtained* Hare got £4 5s and the declarant got £3 5s Jones, &c, said that *they would be glad to see them again when they had any other body to dispose of*

Early last spring, 1828, a woman from Gilmerton came to Hare's house as a nightly lodger,—Hare keeping seven beds for lodgers. That she was a stranger, and she and Hare became merry, and drank together; and next morning she was

Appendix I.

very ill in consequence of what she had got, and she sent for more drink, and she and Hare drank together, and she became very sick and vomited, and at that time she had not risen from bed, and Hare then said that they would try and smother her in order to dispose of her body to the doctors * That she was lying on her back in the bed, and quite insensible from drink, and Hare clapped his hand on her mouth and nose, and the declarant laid himself across her body, in order to prevent her making any disturbance—and she never stirred, and they took her out of bed and undressed her, and put her into a chest, and they mentioned to Dr Knox's young men that they had another subject, and Mr. Miller sent a porter to meet them in the evening at the back of the Castle; and declarant and Hare carried the chest till they met the porter, and they accompanied the porter with the chest to Dr Knox's class-room, and Dr. Knox came in when they were there the body was cold and stiff *Dr Knox approved of its being so fresh, but did not ask any questions*

The next was a man named Joseph,† a miller who had been lying badly in the house That he got some drink from declarant and Hare, but was not tipsy. he was very ill, lying in bed, and could not speak sometimes, and there was a report on that account that there was fever in the house, which made Hare and his wife uneasy in case it should keep away lodgers, and they (declarant and Hare) agreed that they should suffocate him for the same purpose, and the declarant got a small pillow and laid it across Joseph's mouth, and Hare lay across the body to keep down the arms and legs, and *he was disposed of in the same manner, to the same person*, and the body was carried by the porter who carried the last body

In May, 1828, as he thinks, an old woman came to the house as a lodger, and she was the worse of drink, and she got more drink of her own accord, and she became very drunk, and declarant suffocated her; and Hare was not in the house at the time; and *she was disposed of in the same manner*

Soon afterwards an Englishman lodged there for some nights, and was ill of the jaundice that he was in bed very unwell, and Hare and declarant got above him and held him down, and by holding his mouth suffocated him, and *disposed of him in the same manner*

Shortly afterwards an old woman named Haldane, (but he knows nothing farther of her) lodged in the house, and she had got some drink at the time, and got more to intoxicate her, and he and Hare suffocated her, and *disposed of her in the same manner*

Soon afterwards a ciuder woman came to the house as a lodger, as he believes, and she got drink from Hare and the declarant, and became tipsy, and she was half asleep, and he and Hare suffocated her, and *disposed of her in the same manner.*

About Midsummer 1828, a woman, with her son or grandson, about twelve

* When the reader notices what is printed above in italics, he will see that the facility with which Burke and Hare got a purchaser for the body of Donald, and the desire to "see them again when they had any other body to dispose of," must have been great inducements to such miscreants to commence their career of murder.—*Original Note*

† Hare gave the same account as Burke of the number, and the same description of the victims, but they differ in the order of time in which the murders were committed. He stated, with great probability, that the body of Joseph, the miller, was the second sold (that of the old pensioner being the first), and, of course, he was the first man murdered. Burke, with less likelihood, asserts, as above, that the first murder was that of the female lodger. We are apt to think that Hare was right; for there was an additional motive to reconcile them to the deed in the miller's case—the fear that the apprehensions entertained through the fever would discredit the house, and the consideration that there was, as they might think, less crime in killing a man who was to die at any rate. It is not odd that Burke noted upon, as he seems always to have been, by ardent spirits, and involved in a constant succession of murder, should have imitated the two actions.—*Original Note by Sir Walter Scott*

Burke and Hare.

years of age, and who seemed to be weak in his mind, came to the house as lodgers, the woman got a dram, and when in bed asleep, he and Hare suffocated her. and the boy was sitting at the fire in the kitchen, and he and Hare took hold of him, and carried him into the room, and suffocated him. **THEY WERE PUT INTO A HERRING BARREL THE SAME NIGHT, AND CARRIED TO DR. KNOX'S ROOMS**

That, soon afterwards, the declarant brought a woman to the house as a lodger; and after some days she got drunk, and *was disposed of in the same manner*. That declarant and Hare generally tried if lodgers would drink, and if they would drink, they were disposed of in that manner.

The declarant then went for a few days to the house of Helen M'Dougal's father, and when he returned he learned from Hare that *he had disposed of a woman* in the declarant's absence, *in the same manner*, in his house, but the declarant does not know the woman's name, or any farther particulars of the case, or whether any other person was present or knew of it.

That about this time he went to live in Broggan's house, and a woman, named Margaret Haldane, daughter of the woman Haldane before mentioned, and whose sister is married to Clark, a tinsmith in the High Street, came into the house, but the declarant does not remember for what purpose, and she got drunk, and *was disposed of in the same manner*. That Hare was not present, and neither Broggan nor his son knew the least thing about that or any other case of the same kind.

That in April, 1828, he fell in with the girl Paterson and her companion in Constantine Burke's house, and they had breakfast together, and he sent for Hare, and he and Hare disposed of her in the same manner, and Mr Feiguson and a tall lad, who seemed to have known the woman by sight, asked where they had got the body, and the declarant said he had purchased it from an old woman at the back of the Canongate. *The body was disposed of five or six hours after the girl was killed, and it was cold, but not very stiff, but he does not recollect of any remarks being made about the body being warm.*

One day in September or October 1828, a washer-woman had been washing in the house for some time, and he and Hare suffocated her, and *disposed of her in the same manner.*

Soon afterwards, a woman named M'Dougal, who was a distant relation of Helen M'Dougal's first husband,* came to Broggan's house to see M'Dougal; and after she had been coming and going to the house for a few days, she got drunk, and was served in the same way by the declarant and Hare.

That "Daft Jamie" was then disposed of in the manner mentioned in the indictment, except that Hare was concerned in it. That Hare was lying alongside of Jamie in the bed, and Hare suddenly turned on him, and put his hand on his mouth and nose, and Jamie, who had got drunk, but was not drunk, made a terrible resistance, and he and Hare fell from the bed together, Hare still keeping hold of Jamie's mouth and nose; and as they lay on the floor together, declarant lay across Jamie, to prevent him from resuscitating, and they held him in that state till he was dead, and he was disposed of in the same manner: and Hare took a brass snuff-box and a spoon from Jamie's pocket; and kept the box to himself, and never gave it to the declarant—but he gave him the spoon.

And the last was the old woman Docherty, for whose murder he has been convicted. That she was not put to death in the manner deposed to by Hare

* It is certain that Helen M'Dougal (or rather Dougal, for that is her proper name), never was married: she absconded from home with a married man of the name of M'Dougal, long before she knew Burke, and had two children by him: he is the father of Gray's wife.—*Original Note.*

Appendix I.

on the trial That during the scuffle between him and Hare, in the course of which he was nearly strangled by Hare, Docherty had crept among the straw, and after the scuffle was over, they had some drink, and after that they both went forward to where the woman was lying sleeping, and Hare went forward first, and seized her by the mouth and nose, as on former occasions; and at the same time the declarant lay across her, and she had no opportunity of making any noise, and before she was dead, one or other of them, he does not recollect which, took hold of her by the throat That while he and Hare were struggling, which was a real scuffle, M'Dougal opened the door of the apartment, and went into the inner passage and knocked at the door, and called out police and murder, but soon came back, and at the same time Hare's wife called out never to mind, because the declarant and Hare would not hurt one another That whenever he and Hare rose and went towards the straw where Docherty was lying, M'Dougal and Hare's wife, who, he thinks, were lying in bed at the time, or, perhaps, were at the fire, immediately rose and left the house, but did not make any noise, so far as he heard, and he was surprised at their going out at that time, because he did not see how they could have any suspicion of what they (the declarant and Hare) intended doing That he cannot say whether he and Hare would have killed Docherty or not, if the women had remained, because they were so determined to kill the woman, the drink being in their head;—and he has no knowledge or suspicion of Docherty's body having been offered to any person besides Dr Knox, and he does not suspect that Paterson would offer the body to any other person than Dr Knox

Declares, That suffocation was not suggested to them by any person as a mode of killing, but occurred to Hare on the first occasion before mentioned, and was continued afterwards because it was effectual, and showed no marks; and when they lay across the body at the same time, that was not suggested to them by any person, for they never spoke to any person on such a subject, and it was not done for the purpose of preventing the person from breathing, but was only done for the purpose of keeping down the person's arms and thighs, to prevent the person struggling.

Declares, That with the exception of the body of Docherty, they never took the person by the throat, and they never leapt upon them; and declares that there were no marks of violence on any of the subjects, and they were sufficiently cold to prevent any suspicion on the part of the Doctors, and, at all events, they might be cold and stiff enough before the box was opened up, and he and Hare always told some story of their having purchased the subjects from some relation or other person who had the means of disposing of them, about different parts of the town, and the statements which they made were such as to prevent the Doctors having any suspicions, and no suspicions were expressed by Dr Knox or any of his assistants, and no questions asked tending to show that they had suspicion

Declares, that Helen M'Dougal and Hare's wife were no way concerned in any of the murders, and neither of them knew of any thing of the kind being intended, even in the case of Docherty; and although these two women may latterly have had some suspicion in their own minds that the declarant and Hare were concerned in lifting dead bodies, he does not think they could have any suspicion that he and Hare were concerned in committing murders.

Declares, That none of the subjects which they had procured, as before mentioned, were offered to any other person than Dr Knox's assistants, and he and Hare had very little communication with Dr. Knox himself, and declares, that he has not the smallest suspicion of any other person in this, or in any other country, except Hare and himself, being concerned in killing persons and offering

Burke and Hare.

their bodies for dissection, and he never knew or heard of such a thing having been done before

WM BURKE
G TAIT

Present, Mr Geo Tait, Sheriff-Substitute, Mr Archibald Scott, Procurator-Fiscal;
Mr Richard J Moxey, Assistant-Sheriff-Clerk, the Rev William Reid, Roman
Catholic Priest

Edinburgh, 22d January, 1829

Compeared William Burke, at present under sentence of death in the gaol of Edinburgh, and his declaration, of date the 3d current, being read over to him, he adheres thereto Declares further, that he does not know the names and descriptions of any of the persons who were destroyed except as mentioned in his former declaration Declares that he never was concerned in any other act of the same kind, nor made any attempt or preparation to commit such, and all reports of a contrary tendency, some of which he has heard, are groundless And he does not know of Hare being concerned in any such, except as mentioned in his former declaration; and he does not know of any persons being murdered for the purpose of dissection by any other persons than himself and Hare, and if any persons have disappeared any where in Scotland, England, or Ireland, he knows nothing whatever about it, and never heard of such a thing till he was apprehended Declares, that he never had any instrument in his house except a common table knife, or a knife used by him in his trade as a shoemaker, or a small pocket knife, and he never used any of those instruments, or attempted to do so, on any of the persons who were destroyed Declares, that neither he nor Hare, so far as he knows, ever were concerned in supplying any subjects for dissection except those before mentioned, and, in particular, never did so by raising dead bodies from the grave Declares, that they never allowed Dr Knox or any of his assistants, to know exactly where their houses were, but Paterson, Dr Knox's porter or door-keeper, knew And this he declares to be truth *

WM BURKE.
G TAIT.

II

THE "COURANT" CONFESSION

(From the EDINBURGH EVENING COURANT, 7th February, 1829)

The following is the document which we have had for some time in our possession The words printed in Italics were added by himself (Burke) in the MS

Abigail Simpson was murdered on the 12th February, 1828, on the forenoon of the day She resided in Gilmerton, near Edinburgh; has a daughter living there. She used to sell salt and camstone She was decoyed in by Hare and his wife on the afternoon of the 11th February, and he gave her some whisky to

* At the time Burke was under examination by the Sheriff, he (Burke) remarked to a gentleman who happened to see him, "that the murder never would have been discovered, had Gray not found the body of Docherty among the straw" The public satisfaction in the integrity of Gray has been manifested by a subscription in his favour (which, however, has amounted to very little), and by his admission into the Police establishment of Edinburgh, in which he has already given earnest of becoming an active and intrepid officer.—*Original Note.*

Appendix I.

drink She had one shilling and sixpence, and a can of kitchen-fee. Hare's wife gave her one shilling and sixpence for it, she drank it all with them She then said she had a daughter Hare said he was a single man, and would marry her, and get all the money amongst them They then proposed to her to stay all night, which she did, as she was so drunk she could not go home; and in the morning was vomiting They then gave her some porter and whisky, and made her so drunk that she fell asleep on the bed Hare then laid hold of her mouth and nose, and prevented her from breathing Burke held her hands and feet till she was dead She made very little resistance, and when it was convenient they carried her to Dr Knox's dissecting-rooms in Surgeon Square, and got ten pounds for her She had on a drab mantle, a white-grounded cotton shawl and small blue spots on it Hare took all her clothes and went out with them, said he was going to put them into the canal She said she was a pensioner of Sir John Hay's (Perhaps this should be Sir John Hope)

The next was an Englishman, a native of Cheshire, and a lodger of Hare's They murdered him in the same manner as the other He was ill with the jaundice at the same time He was very tall, had black hair, brown whiskers, mixed with grey hairs He used to sell spunk's in Edinburgh, was about forty years of age Did not know his name *Sold to Dr Knox for £10*

The next was an old woman who lodged with Hare for one night, but does not know her name She was murdered in the same manner as above *Sold to Dr Knox for £10* The old woman was decoyed into the house by Mrs Hare in the forenoon from the street when Hare was working at the boats at the canal She gave her whiskey, and put her to bed three times At last she was so drunk that she fell asleep, and when Hare came home to his dinner, he put part of the bed-tick on her mouth and nose, and when he came home at night she was dead Burke at this time was mending shoes; and Hare and Burke took the clothes off her, and put her body into a tea box Took her to Knox's that night

The next was Mary Paterson, who was murdered in Burke's brother's house in the Canongate, in the month of April last, by Burke and Hare, in the forenoon. She was put into a tea-box, and carried to Dr Knox's dissecting-rooms in the afternoon of the same day; and got £8 for her body SHE HAD TWOPENCE HALFPENNY, WHICH SHE HELD FAST IN HER HAND Declares that the girl Paterson was only four hours dead till she was in Knox's dissecting-rooms, but she was not dissected at that time, for she was three months in whiskey before she was dissected SHE WAS WARM WHEN BURKE CUT THE HAIR OFF HER HEAD; and Knox brought a Mr ---, a painter, to look at her, she was so handsome a figure, and well shaped in body and limbs One of the students said she was like a girl he had seen in the Canongate as one pea is like to another They desired Burke to cut off her hair; ONE OF THE STUDENTS GAVE A PAIR OF SCISSORS FOR THAT PURPOSE *

In June last, an old woman and a dumb boy, her grandson, from Glasgow, came to Hare's, and were both murdered at the dead hour of night, when the woman was in bed. Burke and Hare murdered her the same way as they did the others. They took off the bed-clothes and tick, stripped off her clothes, and laid her on the bottom of the bed, and then put on the bed-tick, and bed-clothes on the top of her; and they then came and took the boy in their arms and carried him ben to the room, and murdered him in the same manner, and laid him alongside of his grandmother They lay for the space of an hour; they then put them into a herring barrel. The barrel was perfectly dry; there was no brine in it. They carried them to the stable till next day; they put the barrel into Hare's cart, and Hare's horse was yoked in it; but the horse would not drag the cart one foot past

* What do Dr Knox and his principal assistants say to this statement?—Original Note

Burke and Hare.

the Meal-market, and they got a porter with a hurley, and put the barrel on it. Hare and the porter went to Surgeon Square with it. Burke went before them, as he was afraid something would happen, as the horse would not draw them. When they came to Dr. Knox's dissecting-rooms, Burke carried the barrel in his arms. The students and them had hard work to get them out, being so stiff and cold. They received £16 for them both. Hare was taken in by the horse; he bought that refused drawing the corpse to Surgeon Square, and they shot it in the tan-yard. He had two large holes in his shoulder stuffed with cotton, and covered over with a piece of another horse's skin to prevent them being discovered.

Joseph, the miller by trade, and a lodger of Hare's. He had once been possessed of a good deal of money. He was connected by marriage with some of the Carron Company. Burke and Hare murdered him by pressing a pillow on his mouth and nose till he was dead. He was then carried to Dr. Knox's in Surgeon Square. They got £10 for him.

Burke and Helen M'Dougal wore on a visit seeing their friends near Falkirk. This was at the time a procession was made round a stone in that neighbourhood, thinks it was the anniversary of the battle of Bannockburn. When he was away, Hare fell in with a woman drunk in the street at the West Port. He took her into his house and murdered her himself, and sold her to Dr. Knox's assistants for £8. When Burke went away he knew Hare was in want of money, his things were all in pawn, but when he came back, found him have plenty of money. Burke asked him if he had been doing any business, he said he had been doing nothing. Burke did not believe him, and went to Dr. Knox, who told him that Hare had brought a subject. Hare then confessed what he had done.

A cinder-gatherer; Burke thinks her name was Jiffy. She was in the habit of selling small pieces of leather to him (*as he was a cobbler*), she gathered about the coach-works. He took her into Hare's stable, and gave her whisky to drink till she was drunk, she then lay down among some straw and fell asleep. They then laid a cloth over her. Burke and Hare murdered her as they did the others. She was then carried to Dr. Knox's, Surgeon Square, and sold for £10.

Andrew Williamson, a policeman, and his neighbour, were dragging a drunk woman to the West Port watch-house. They found her sitting on a stair. Burke said, "Let the woman go to her lodgings." They said they did not know where she lodged. Burke then said he would take her to lodgings. They then gave her to his charge. He then took her to Hare's house. Burke and Hare murdered her that night the same way as they did the others. They carried her to Dr. Knox's in Surgeon Square, and got £10.

Burke being asked, did the policemen know him when they gave him this drunk woman into his charge? He said he had a good character with the police, or if they had known that there were four murderers living in one house they would have visited them oftener.

James Wilson, commonly called Daft Jamie. Hare's wife brought him in from the street into her house. Burke was at the time getting a dram in Rymer's shop. He saw her take Jamie off the street, bare-headed and bare-footed. After she got him into her house, and left him with Hare, she came to Rymer's shop for a pennyworth of butter, and Burke was standing at the counter. She asked him for a dram, and in drinking it she stamped him on the foot. He knew immediately what she wanted him for, and he then went after her. * When in the house, she said, you have come too late, for the drink is all done; and Jamie had the cup

* This statement is decisive as respects the criminality of the female fiend, Hare's wife.—Original Note

Appendix I.

in his hand. He had never seen him before to his knowledge. They then proposed to send for another half mutchkin, which they did, and urged him to drink; she took a little with them. They then invited him ben to the little room, and advised him to sit down upon the bed. Hare's wife then went out, and locked the outer door, and put the key below the door. There were none in the room but themselves three. Jamie sat down upon the bed. He then lay down upon the bed, and Hare lay down at his back, his head raised up and resting upon his left hand. Burke was standing at the fore-side of the bed. When they had lain there for some time, Hare threw his body on the top of Jamie, pressed his hand on his mouth, and held his nose with his other. Hare and him fell off the bed and struggled. Burke then held his hands and feet. They never quitted their gripe till he was dead. He never got up nor cried any. When he was dead, Hare felt his pockets, and took out a brass snuff-box and a copper snuff-spoon. He gave the spoon to Burke, and kept the box to himself. Sometime after, he said he threw the box away in the tan-yard, and the brass-box that was libelled against Burke in the Sheriff's-office was Burke's own box. It was after breakfast Jamie was enticed in, and he was murdered by twelve o'clock in the day. **BURKE DECLARES THAT MRS HARE LED POOR JAMIE IN AS A DUMB LAMB TO THE SLAUGHTER, AND AS A SHEEP TO THE SHEARERS,** and he was always very anxious making inquiries for his mother, and was told she would be there immediately. He does not think he drank above one glass of whisky all the time. He was then put into a chest that Hare kept clothes in, and they carried him to Dr Knox's, in Surgeon Square, that afternoon, and got £10 for him. Burke gave Daft Jamie's clothes to his brother's children, they were almost naked, and when he untied the bundle they were like to quarrel about them. The clothes of the other murdered persons were generally destroyed, to prevent detection.

Ann M'Dougal, a cousin of Helen M'Dougal's former husband. She was a young woman, and married, and had come on a visit to see them. Hare and Burke gave her whisky till she was drunk, and when in bed and asleep, Burke told Hare that he would have most to do to her, as she being a distant friend, he did not like to begin first on her. Hare murdered her by stopping her breath, and Burke assisted him the same way as the others. **ONE OF DR KNOX'S ASSISTANTS, Paterson, GAVE THEM A FINE TRUNK TO PUT HER INTO.** It was in the afternoon when she was done. It was in John Broggan's house; and when Broggan came home from his work he saw the trunk, and made inquiries about it, as he knew they had no trunks there. Burke then gave him two or three drams, as there was always plenty of whisky going at these times, to make him quiet. Hare and Burke then gave him £1 10s. each, as he was back in his rent, for to pay it, and he left Edinburgh a few days after. They then carried her to Surgeon Square as soon as Broggan went out of the house, and got £10 for her. Hare was cautioner for Broggan's rent, being £3, and Hare and Burke gave him that sum. Broggan went off in a few days, and the rent is not paid yet. They gave him the money that he might not come against them for the murder of Ann M'Dougal, that he saw in the trunk, that was murdered in his house. Hare thought that the rent would fall upon him, and if he could get Burke to pay the half of it, it would be so much the better; and proposed this to Burke, and he agreed to it, as they were glad to get him out of the way. Broggan's wife is a cousin of Burke's. They thought he went to Glasgow, but are not sure.

Mrs Haldane, a stout old woman, who had a daughter transported last summer from the Calton jail for fourteen years, and has another daughter married to —, in the High Street. She was a lodger of Hare's. She went into Hare's stable; the door was left open, and she being drunk, and falling asleep among some straw,

Burke and Hare.

Hare and Burke murdered her the same way as they did the others, and kept the body all night in the stable, and took her to Dr Knox's next day. She had but one tooth in her mouth, and that was a very large one in front.

A young woman, a daughter of Mrs Haldane, of the name of Peggy Haldane, was drunk, and sleeping in Broggan's house, was murdered by Burke himself, in the forenoon. Hare had no hand in it. She was taken to Dr Knox's in the afternoon in a tea-box, and £8 got for her. She was so drunk at the time that he thinks she was not sensible of her death, as she made no resistance whatever. She and her mother were both lodgers of Hare's, and they were both of idle habits, and much given to drinking. This was the only murder that Burke committed by himself, but what Hare was connected with. She was laid with her face downwards, and he pressed her down, and she was soon suffocated.

There was a Miss Hostler washing in John Broggan's, and she came back next day to finish up the clothes, and when done, Hare and Burke gave her some whisky to drink, which made her drunk. This was in the day-time. She then went to bed. Mrs Broggan was out at the time. Hare and Burke murdered her the same way they did the others, and put her in a box, and set her in the coalhouse in the passage, and carried her off to Dr Knox's in the afternoon of the same day, and got £8 for her. Broggan's wife was out of the house at the time the murder was committed. Mrs Hostler had ninepence halfpenny in her hand, which they could scarcely get out of it after she was dead, so firmly was it grasped.

The woman Campbell or Docherty was murdered on the 31st October last, and she was the last one. Burke declares that Hare perjured himself on his trial, when giving his evidence against him, as the woman Campbell or Docherty lay down among some straw at the bedside, and Hare laid hold of her mouth and nose, and pressed her throat, and Burke assisted him in it, till she was dead. Hare was not sitting on a chair at the time, as he said in the Court. There were seven shillings in the woman's pocket, which were divided between Hare and Burke.

That was the whole of them—sixteen in whole. Nine were murdered in Hare's house, and four in John Broggan's; two in Hare's stable, and one in Burke's brother's house in the Canongate. Burke declares that five of them were murdered in Hare's room that has the iron bolt in the inside of it. Burke did not know the days nor the months the different murders were committed, nor all their names. They were generally in a state of intoxication at those times, and paid little attention to them; but they were all from 12th February till 1st November, 1828; but he thinks Dr Knox will know by the dates of paying him the money for them. He never was concerned with any other person but Hare in those matters, and was never a resurrection man, and never dealt in dead bodies but what he murdered. **HE WAS URGED BY HARE'S WIFE TO MURDER HELEN M'DOUGAL**, the woman he lived with. The plan was, that he was to go to the country for a few weeks, and then write to Hare that she had died and was buried, and he was to tell this to deceive the neighbours; but he would not agree to it. **THE REASON WAS, THEY COULD NOT TRUST TO HER, AS SHE WAS A SCOTCH WOMAN.** Helen M'Dougal and Hare's wife were not present when those murders were committed. They might have a suspicion of what was doing, but did not see them done. Hare was always the most anxious about them, and could sleep well at night after committing a murder; but Burke repented often of the crime, and could not sleep without a bottle of whisky by his bedside, and a twopenny candle to burn all night beside him; when he awoke he would take a draught of the bottle—sometimes half a bottle at a draught—and that would make him sleep. They had a great many pointed out for murder, but were disappointed of them by some means or other; they were always in a drunken state when they committed those murders, and when

Appendix I.

they got the money for them while it lasted. When done, they would pawn their clothes, and would take them out as soon as they got a subject. When they first began this murdering system, they always took them to Knox's after dark, but being so successful, they went in the day-time, and grew more bold. When they carried the girl Paterson to Knox's, there were a great many boys in the High School Yards, who followed Burke and the man that carried her, crying, "They are carrying a corpse", but they got her safe delivered. They often said to one another that no person could find them out, no one being present at the murders but themselves two, and that they might be as well hanged for a sheep as a lamb. They made it their business to look out for persons to decoy into their houses to murder them. Burke declares, when they kept the mouth and nose shut a very few minutes, they could make no resistance, but would convulse and make a rumbling noise in their bellies for some time, after they ceased crying and making resistance, they left them to die of themselves; but their bodies would often move afterwards, and for some time they would have long breathings before life went away. Burke declares that it was God's providence that put a stop to their murdering career, or he does not know how far they might have gone with it, even to attack people on the streets, as THEY WERE SO SUCCESSFUL, AND ALWAYS MET WITH A READY MARKET THAT WHEN THEY DELIVERED A BODY THEY WERE ALWAYS TOLD TO GET MORE*. Hare was always with him when he went with a subject, and also when he got the money. Burke declares, that Hare and him had a plan made up, that Burke and a man were to go to Glasgow or Ireland, and try the same there, and to forward them to Hare, and he was to give them to Dr. Knox. Hare's wife always got £1 of Burke's share, for the use of the house, of all that were murdered in their house; for if the price received was £10, Hare got £6, and Burke got only £4; but BURKE DID NOT GIVE HER THE £1 FOR DAFT JAMIE, FOR WHICH HARE'S WIFE WOULD NOT SPEAK TO HIM FOR THREE WEEKS. They could get nothing done during the harvest-time, and also after harvest, as Hare's house was so full of lodgers. In Hare's house were eight beds for lodgers; they paid 3d. each; and two, and sometimes three, slept in a bed; and during harvest they gave up their own bed when throng. Burke declares they went under the name of resurrection men in the West Port, where they lived, but not murderers. When they wanted money, they would say they would go and look for a shot; that was the name they gave them when they wanted to murder any person. They entered into a contract with Dr. Knox and his assistants that they were to get £10 in winter, and £8 in summer for as many subjects as they could bring to them.

Old Donald, a pensioner, who lodged in Hare's house, and died of a dropsy, was the first subject they sold. After he was put into the coffin and the lid put on, Hare unscrewed the nails and Burke lifted the body out. Hare filled the coffin with bark from the tan-yard, and put a sheet over the bark, and it was buried in the West Church Yard. The coffin was furnished by the parish. Hare and Burke took him to the College first; they saw a man there, and asked for Dr. Monro, or any of his men; the man asked what they wanted, or had they a subject; they said they had. He then ordered them to call at 10, Dr. Knox's, in Surgeon Square, and he would take it from them, which they did. They got £7 10s. for him. That was the only subject they sold that they did not murder, and getting that high price made them try the murdering for subjects.

Burke is thirty-six years of age, was born in the parish of Orrey, county Tyrone; served seven years in the army, most of that time as an officer's servant

* "They were always told to get more", alas! it is now too apparent what effect these words carried in the minds of Burke and Hare.—*Original Note.*

Burke and Hare.

in the Donegal militia; he was married at Ballinacorney, in the county of Mayo, when in the army, but left his wife and two children in Ireland. She would not come to Scotland with them. He had often wrote to her, but got no answer; he came to Scotland to work at the Union Canal, and wrought there while it lasted; he resided for about two years in Peebles, and worked as a labourer. He wrought as weaver for eighteen months, and as a baker for five months; he learned to mend shoes, as a cobbler, with a man he lodged with in Leith, and he has lived with Helen M'Dougal about ten years, until he and she were confined in the Calton Jail, on the charge of murdering the woman of the name of Docherty or Campbell, and both were tried before the High Court of Justiciary in December last. Helen M'Dougal's charge was found not proven, and Burke found guilty, and sentenced to suffer death on the 28th January.

Declares, that Hare's servant girl could give information respecting the murders done in Hare's house, if she likes. She came to him at Whitsunday last, went to harvest, and returned back to him when the harvest was over. She remained until he was confined along with his wife in the Calton Jail. She then sold twenty-one of his swine for £3, and absconded. She was gathering potatoes in a field that day Daft Jamie was murdered, she saw his clothes in the house when she came home at night. Her name is Elizabeth M'Guier or Mair*. Their wives saw that people came into their houses at night, and went to bed as lodgers, but did not see them in the morning, nor did they make any inquiries after them. They certainly knew what became of them, although Burke and Hare pretended to the contrary. Hare's wife often helped Burke and Hare to pack the murdered bodies into the boxes. HELEN M'DOUGAL NEVER DID, NOR SAW THEM DONE; BURKE NEVER DURET LET HER KNOW, he used to smuggle in drink, and get better victuals unknown to her; he told her he bought dead bodies, and sold them to doctors, and that was the way they got the name of resurrection-men.

"Burk declares that doctor Knox never incouraged him, nether taught him or incoregd him to murder any person, nether any of his awtents, that worthy gentleman Mr Ferguson was the only man that ever mentioned any thing about the bodies. He inquired where we got that yong woman Paterson

(Signed) "WILLIAM BURKE, prisoner"†

Condemned Cell, January 21, 1810.

APPENDIX II.

EXECUTION OF BURKE

(From Contemporary Sources)

Shortly after mid-day of Tuesday, the 27th January, preparations commenced at the place of execution. Strong poles were fixed in the street, to support the chain by which the crowd was kept at due distance, and on this occasion the space

* She is a native of Ireland, as we are well informed—*Original Note*.

† While Burke was in the Lock-up house, the evening before his execution, he signed a paper, in which he says, "The document, or narrative, which I signed for—Ewart, was correct, so far as I had time to examine it (but it was given under the express stipulation that it should not be published for three months after my decease). I authorize—to insist upon the delivery of the paper above alluded to from the *Courant* office, or any other person in whose possession it may be; and, at same time, I desire Bailie Small to be present when the papers are demanded and got up, and that they may be taken to the Sheriff's Office, and compared with my declaration made before the sheriff, which is the only full statement that can be relied on"—And this is witnessed by Bailie Small, Mr. Porteous and Mr. James Burn.—*Original Note*



EXECUTION of the notorious WILLIAM BURKE the murderer, who supplied DO-KNON with subjects

Execution of Burke.

From a contemporary Print

Appendix II.

enclosed was considerably larger than usual. By half-past ten o'clock at night, the frame of the gibbet was brought to the spot; and, as the night was very wet, there was no time lost by the workmen, and by 12 o'clock, the whole preparations in this department were completed. So exceedingly anxious were all ranks, that in utter disregard of the "pelting of the pitiless storm," the operatives were constantly surrounded by a great assemblage. When their labours were finished, *the crowd evinced their abhorrence of the monster Burke, and all concerned in the West Port murders, by three tremendous cheers*

About four o'clock on Tuesday morning, he was taken in a coach from the jail on the Calton Hill to the Lock-up, a prison immediately adjacent to the place of execution.

At a very early hour on Wednesday morning, although the rain fell in torrents, the people began to assemble, and by eight o'clock, one of the densest crowds had collected ever witnessed on the streets of Edinburgh—certainly there were not fewer than from 20,000 to 25,000 spectators. Every window and house-top from which a glimpse of the criminal could be obtained was occupied. For some days previous, great interest had been used to obtain windows commanding a full view of the scaffold, the cost varying according to the local position, from five to twenty shillings. Crowds of people continued to arrive, not only from all parts of the city, but from all the neighbouring towns. The scene at this time was deeply impressive. No person could without emotion survey such a vast assemblage, so closely wedged together, gazing on the fatal apparatus, and waiting in anxious and solemn silence the arrival of the worst of murderers.

Burke slept soundly a great part of Tuesday night, and when he awoke, expressed some anxiety to have his irons struck off, which was done about half-past five o'clock. When holding up his leg, and when the fetters fell off, he said, "So may all my earthly chains fall!" At a previous part of the morning, he held up his hand, and with much apparent earnestness, said, "Oh that the hour was come which shall separate me from this world!" About half-past six o'clock, the two Catholic clergymen (the Rev. Messrs Reid and Stewart) entered the Lock-up-house, and the former immediately waited upon the criminal in his cell. At seven o'clock, he walked into the keeper's room, with a firm step, followed by Mr Reid, and took his seat in an arm-chair by the side of the fire. It was remarked, however, that twice or thrice he sighed heavily. At this time two of the magistrates were present, and were shortly after joined by the Rev Messrs Marshall and Porteous. The criminal and his spiritual assistants of the Catholic persuasion had, in the meantime, commenced their devotions, Burke apparently taking a fervent interest in these solemn preparations for his end. In the course of the religious exercise, the priest endeavoured to comfort his mind, and exhorted him to "confide in the mercy of God." This expression appeared to touch some peculiar chord of sympathy in the prisoner's breast, and drew from him a deep sigh, which seemed to bespeak some sudden and indescribable, though momentary, distraction of mind. In returning to another apartment, he was accidentally met by the executioner, who stopt him rather unceremoniously, upon which he said, "I am not just ready for you yet." He was, however, followed by Williams, and returned shortly afterwards with his arms pinioned, but without any change in his demeanour. While the executioner was discharging this part of his duty, Burke made no remark, except to tell him that his handkerchief was tied behind. He was then offered a glass of wine, which he accepted, and drank "*Farewell to all my friends!*" and then entered into conversation for a few minutes with Mr. Marshall and Mr Porteous. The magistrates, Baillies Crichton and Small, now appeared in their robes, with their

Burke and Hare.

rods of office, and the criminal took the opportunity, before he went forth to meet his doom, of expressing his gratitude to the magistrates, particularly to Baillie Small, for the kindness he had experienced from him, as well as from all the public authorities. He also made similar acknowledgments to Mr Rose, the governor, Mr Fisher, the deputy, and Mr and Mrs Christie, who have the charge of the Lock-up-house.

At eight o'clock, the procession left the Lock-up-house, and Burke walked to the scaffold with a firm step, but leaning on the arm of Mr Reid. As soon as the officers by whom the culprit was proceeded made their appearance at the head of Libberton's Wynd, *one loud and simultaneous shout was given by the crowd.* When he mounted the stair, it was with a step as if he were anxious to bring the tragedy to a conclusion; and having heard the shouts of the multitude, his presence of mind seemed to be disturbed a good deal, and he appeared to require more support than when he was walking from the Lock-up-house. When he was fairly upon the scaffold, loud and universal shouts and yells of *execration* burst from the spectators, and he cast a look of fierce and even desperate defiance at the multitude. He knelt immediately, and was engaged for a few minutes in his devotions, assisted by one of the Catholic priests. Mr Marshall concluded the religious exercises by a short prayer. At the time when the culprit was observed to kneel, which he did with his back to the crowd, the shouts were repeated, with cries, to the persons on the scaffold, of "Stand out of the way!" "Turn him round!" &c. Signals were made to the crowd by the magistrates to intimate that Burke was engaged in his devotions, but these were totally disregarded, and the clamours continued. Besides the cries above noticed, shouts were heard of "Hare! Hare! bring out Hare!" "HANG KNOX!" "He's a *noxious morsel!*" When Burke rose from his knees, he lifted a silk handkerchief upon which he had knelt, and put it with much care in his pocket, he then gave one single glance up to the gallows.

At ten minutes past eight, Burke took his place on the drop. While the executioner was adjusting the rope, one of the priests said to him, "Now say your creed; and when you come to the words 'Lord Jesus Christ,' give the signal, and die with his blessed name in your mouth." During all this time shouts were heard of, "Burke him!" "Give him no rope!" "Do the same for Hare!" "Weigh them together!" "Wash blood from the land!" &c. When the executioner was about to unloose his handkerchief, in order to adjust the rope, Burke said to him, "The knot's behind"; which were the only words he uttered on the scaffold. Precisely at a quarter past eight, Burke gave the signal, and amidst the most tremendous shouts, died almost without a struggle.

On the body being cut down, about five minutes before nine o'clock, another shout was sent forth by the multitude. There was evidently a great desire to get hold of the dead body, and the people were only restrained by the numerous body of police, aided by the strong barriers. A scramble took place among the assistants under the scaffold for portions of the rope, and knives and scissors were actively at work. Even a handful of shavings from the coffin was pocketed as a relic. Not the slightest accident of any kind occurred.

The body of Burke was removed, during the night, to Dr Monro's classroom, and on Thursday it was in part dissected. The brain was the portion of the subject which was lectured upon; it was described as unusually soft; but peculiar softness is by no means uncommon in criminals who suffer the last punishment of the law. The anxiety to see the body was very great. A prodigious crowd collected at an early hour in the forenoon, and besieged the classroom door, eager to gain admission. The regular students were provided with

Appendix II.

tickets It was with great difficulty, however, that these could be made available, even with the assistance of the police. Those having been accommodated who were entitled to admission, others were then admitted till the room was filled. The lecture began at one o'clock, and is usually over by two, but from the nature of the subject it was necessarily protracted, and did not terminate till after three. About half-past two o'clock, however, a body of young men, consisting chiefly of students, assembling in the area, and becoming clamorous for admission, which of course was quite impracticable, it was found necessary to send for a body of police to preserve order. But this proceeding had quite an opposite effect from that intended. Indignant at the opposition they met with, conceiving themselves to have a preferable title to admission, and exasperated at the display of force, the young men made several attempts, in which they had nearly succeeded, to overpower the police, and broke a good deal of glass in the windows on either side of the entrance to the anatomical theatre. The police were in fact compelled to use their batons, and several hard blows were exchanged on both sides. The Lord Provost was present for some time, but was glad to retire with whole bones, amidst the senseless hootings of the obstreperous youths, who lavished opprobrious epithets on the magistrates, particularly on Bailie Small, the College Bailie. This disturbance lasted from half-past two till nearly four o'clock, when an end was at once put to it by the good sense of Professor Christison, who announced to the young men that he had arranged for their admission in parties of about fifty at a time, giving his own personal guarantee for their good conduct. This was received with loud cheers, and immediately the riotous disposition they had previously manifested, disappeared. Several of the more violent of the youths were taken into custody by the police, but were liberated on their parole by the magistrates. Several of the policemen, we regret to learn, were severely hurt, as also were some of the students. On Friday an order was given to admit the public generally to view the body of Burke, and of course many thousands availed themselves of the opportunity thus afforded them. Indeed, so long as daylight lasted, a stream of persons continued to flow through the College Square, who, as they arrived, were admitted by one stair to the anatomical theatre, passed the table on which lay the body of the murderer, and made their exit by another stair. By these means no inconvenience was felt, except what was occasioned by the impatience of the crowd to get forward to the theatre. As if to preserve a uniformity in the disgusting details connected with this monster, it remains to be recorded that seven females pressed in among the rest of the crowd to view the corpse. They were roughly handled, and had their clothes torn by the male spectators.

APPENDIX III.

DR. KNOX'S LETTER TO THE NEWSPAPER PRESS

To the Editor of the *Caledonian Mercury*.

Sir,—I regret troubling either you or the public with anything personal, but I cannot be insensible of the feelings of my friends, or of the character of the profession to which I have the honour of belonging. Had I alone been concerned, I should never have thought of obtruding on the public by this communication.

I have a class of above 400 pupils. No person can be at the head of such

Burke and Hare.

an establishment without necessarily running the risk of being imposed upon by those who furnish the material of their science to anatomical teachers, and, accordingly, there is hardly any such person who has not occasionally incurred odium or suspicion from his supposed accession to those violations of the law, without which anatomy can scarcely now be practised. That I should have become an object of popular prejudice, therefore, since mine happened to be the establishment with which Burke and Hare chiefly dealt, was nothing more than what I had to expect. But if means had not been purposely taken, and most keenly persevered in, to misrepresent facts and to inflame the public mind, that prejudice would at least have stood on right ground, and would ultimately have passed away, by its being seen that I had been exposed to a mere misfortune which would almost certainly have occurred to anybody else who had been in my situation.

But every effort has been employed to convert my misfortune into positive and intended personal guilt of the most dreadful character. Scarcely any individual has ever been the object of more systematic or atrocious attacks than I have been. Nobody acquainted with this place requires to be told from what quarter these have proceeded.

I allowed them to go on for months without taking the slightest notice of them, and I was inclined to adhere to this system, especially as the public authorities by never charging me with any offence, gave the whole attestation they could that they had nothing to charge me with. But my friends interfered for me. Without consulting me, they directed an agent to institute the most rigid and unsparing examination into the facts. I was totally unacquainted with this gentleman, but I understood that in naming Mr. Ellis they named a person whose character is a sufficient pledge for the propriety of his proceedings.

The result of his inquiries was laid before the Dean of Faculty and another Counsel, who were asked what ought to be done. These gentlemen gave it as their opinion that the evidence was completely satisfactory, and that there was no want of actionable matter, but that there was one ground on which it was my duty to resist the temptation of going into a Court of law. This was, that the disclosures of the most innocent proceedings even of the best-conducted dissecting-room must always shock the public and be hurtful to science. But they recommended that a few persons of undoubted weight and character should be asked to investigate the matter, in order that, if I deserved it, an attestation might be given to me which would be more satisfactory to my friends than any mere statements of mine could be expected to be. This led to the formation of a Committee, which was never meant by me to be anything but private. But the fact of its sitting soon got into the newspapers, and hence the necessity under which I am placed of explaining how that proceeding, in which the public has been made to take an interest, has terminated.

I have been on habits of friendship with some of the Committee, with others of them I have been acquainted, and some of them I don't even know by sight. I took no charge whatever of their proceedings. In order that there might be no pretence for saying that truth was obstructed from fear, I gave a written protection to every person to say what he chose about or against me. The extent to which this was in some instances taken advantage of will probably not be soon forgotten by those who witnessed it.

After a severe and laborious investigation of about six weeks, the result is contained in the following report, which was put into my hands last night. It is signed by every member of the Committee except one, who ceased to act long before the evidence was completed.

Appendix III.

I cannot be supposed to be a candid judge of my own case, and therefore it is extremely probable that any opinion of mine on the last view adopted by the Committee is incorrect and theirs right. If it be so, I most willingly submit to the censure they have inflicted, and shall hold it my duty to profit from it by due care hereafter. My consolation is, that I have at least not been obstinate in my errors, and that no sanction has ever been given in any fair quarter to the more serious imputations by which it has been the interest of certain persons to assail me. Candid men will judge of me according to the situation in which I was placed at the time, and not according to the wisdom which has unexpectedly been acquired since.

This is the very first time that I have ever made any statement to the public in my own vindication, and it shall be the last. It would be unjust to the authors of the former calumnies to suppose that they would not renew them now. I can only assure them that, in so far as I am concerned, they will renew them in vain.

I have the honour to be, &c, &c,

R Knox

Edinburgh, 10 Surgeons' Square,
17th March, 1829

APPENDIX IV

REPORT OF THE COMMITTEE OF INVESTIGATION AS TO THE DEALINGS OF DR KNOX WITH THE WEST PORT MURDERERS

The Committee who, at the request of Dr Knox, undertook to investigate the truth or falsehood of the rumours in circulation regarding him, have gone into an extensive examination of evidence, in the course of which they have courted information from every quarter. They have been readily furnished with all which they required from Dr Knox himself, and though they have failed in some attempts to procure evidence, they have in most quarters succeeded in obtaining it, and especially from those persons who have been represented to them as having spoken the most confidently in support of these rumours, and they have unanimously agreed on the following report.

1 The Committee have seen no evidence that Dr. Knox or his assistants knew that murder was committed in procuring any of the subjects brought to his rooms, and the Committee firmly believe that they did not.

2 On the question whether any suspicion of murder at any time existed in Dr Knox's mind, the Committee would observe that there were certainly several circumstances (already known to the public), regarding some of the subjects brought by Burke and Mare, which, now that the truth has come out, appear calculated to excite suspicion, particularly the very early period after death at which they were brought to the rooms, and the absence of external marks of disease, together with the opinion previously expressed by Dr. Knox, in common with most other anatomists, of the generally abandoned character of persons engaged in this traffic. But, on the other hand, the Committee, after much anxious inquiry, have found no evidence of their actually having excited it in the mind of Dr. Knox, or of any other of the individuals who saw the bodies of these unfortunate persons prior to the apprehension of Burke.

Burke and Hare.

The bodies do not appear in any instance to have borne any external marks by which it could have been known whether they had died by violence or suddenly from natural causes, or from disease of short duration, and the mode of protracted anatomical dissection practised in this and other similar establishments is such as would have made it very difficult to ascertain the causes of death, even if special inquiry had been instituted with that intention.

No evidence whatever has come before the Committee that any suspicion of murder was expressed to Dr Knox by any one, whether of his assistants or of his very numerous class (amounting to upwards of 400 students), or other persons who were in the practice of frequently visiting his rooms, and there are several circumstances in his conduct, particularly the complete publicity with which his establishment was managed, and his anxiety to lay each subject before the students as soon as possible after its reception, which seem to the Committee strongly to indicate that he had no suspicion of the atrocious means by which they had been procured.

It has also been proved to the satisfaction of the Committee, that no mutilation or disfigurement of any kind was ever practised with a view to conceal the features, or abstract unseasonably any part of the body, the presence of which might have facilitated detection, and it appears clearly that the subjects brought by Burke and Hare were dissected in the same protracted manner as those procured from any other quarter.

3 The Committee have thought it proper to inquire further, whether there was anything faulty or negligent in the regulations under which subjects were received into Dr Knox's rooms, which gave, or might give, a peculiar facility to the disposal of the bodies obtained by these crimes, and on this point they think it their duty to state their opinion fully.

It appears in evidence, that Dr Knox had formed and expressed the opinion, long prior to any dealings with Burke and Hare, that a considerable supply of subjects for anatomical purposes might be procured by purchase, and without any crime, from the relations or connections of deceased persons in the lowest ranks of society. In forming this opinion, whether mistaken or not, the Committee cannot consider Dr Knox to have been culpable. They believe there is nothing contrary to the law of the land in procuring subjects for dissection in that way, and they know that the opinion which Dr Knox had formed on this point, though never acted on to any extent in the profession, has been avowed by others of the highest character in the profession. But they think that Dr. Knox acted on this opinion in a very incautious manner.

This preconceived opinion seems to have led him to give a ready ear to the plausible stories of Burke, who appears from all the evidence before the Committee to have conducted himself with great address and appearance of honesty, as well as in his conversations with Dr Knox as in his more frequent intercourse with his assistants, and always to have represented himself as engaged in negotiations of that description, and occasionally to have asked and obtained money in advance to enable him and his associate to conclude bargains.

Unfortunately also Dr Knox had been led, apparently in consequence of the extent and variety of his avocations, to entrust the dealings with persons supplying subjects and the reception of the subjects brought to his assistants (seven in number) and to his doorkeeper indiscriminately. It appears also that he directed or allowed these dealings to be conducted on the understanding (common to him with some other anatomists) that it would only tend to diminish or divert the supply of subjects to make any particular inquiry of the person bringing them as to the place and mode of obtaining them.

Appendix IV.

In these respects, the Committee consider the practice which was then adopted in Dr. Knox's rooms (whatever be the usage in this or other establishments in regard to subjects obtained in the ordinary way) to have been very improper in the case of persons bringing bodies which had not been interred. They think that the notoriously bad character of persons who generally engage in any such traffic in addition to the novelty and particular nature of the system on which these men professed to be acting, undoubtedly demanded greater vigilance.

The extent, therefore, to which (judging from the evidence which they have been able to procure) the Committee think that Dr. Knox can be blamed on account of transactions with Burke and Hare is, that by this laxity of the regulations under which bodies were received into his rooms, he unintentionally gave a degree of facility to the disposal of the victims of their crimes, which under better regulations would not have existed, and which is doubtless matter of deep and lasting regret, not only to himself but to all who have reflected on the importance and are therefore interested in the prosecution of the study of anatomy. But while they point out this circumstance as the only ground of censure which they can discover in the conduct of Dr. Knox, it is fair to observe, that perhaps the recent disclosures have made it appear reprehensible to many who would not otherwise have adverted to its possible consequences.

JOHN ROBINSON, *Chairman*
M. P. BROWN
JAMES RUSSELL
J. SHAW STEWART

W P ALLISON.
GEO BALLINGALL.
GEORGE SINCLAIR
W HAMILTON.
THOMAS ALLAN.

13th March, 1829

[The gentlemen who formed the Committee were Mr (afterwards Sir John) Robinson, Secretary to the Royal Society; Mr Brown, Advocate; Mr Russell, Professor of Clinical Surgery; Mr Stewart, Advocate, Dr Allison, Professor of the Theory of Physic, Sir George Ballingall, Professor of Military Surgery; Mr (afterwards Sir George) Sinclair, younger, of Ulbster, Sir W Hamilton, Bart, Professor of Universal History, Mr Allan, banker in Edinburgh. The Marquess of Queensberry, who was originally the Chairman, withdrew from the Committee, as intimated in the *Courant* of 23rd February, 1829. No reason was assigned to his action—*Ed.*]

APPENDIX V.

NOTE ON THE PRESENT ADMINISTRATION OF THE ANATOMY ACT BY DR ARTHUR ROBINSON, PROFESSOR OF ANATOMY IN THE UNIVERSITY OF EDINBURGH.

The scandal caused by the infamous deeds of Burke and Hare roused the public to the necessity of attempting to make provision for the proper study of human anatomy, so that the practice of medicine and surgery might be improved in the interest of the public welfare.

The result was the passing of the Anatomy Act of 1832, which authorised those persons who had legal custody of a dead body to allow it to be sent to a medical school so that, before it was buried, it might be used for the study of anatomy and the practice of surgical operations.

Burke and Hare.

The legal custodians are, in the first place, the relatives, and, failing them or if they cannot be found, it has been customary to count Public Health Authorities, Parish Councils, Boards of Guardians, &c, as the legal custodians.

That method, however, is only based on custom, for the Home Secretary in the case of England and the Secretary for Scotland in the case of Scotland, inasmuch as they are supreme over the Public Health Authorities, &c, are actually in legal control of all dead bodies who have no relatives or whose relatives are unknown, and it has proved to be unfortunate that their authority has been deputed.

Unfortunate because the Act is permissive, for the sentiment of one or more of the members of the authorities mentioned has frequently prevented the bodies of those who died without relatives, or whose relatives could not be found, from being utilised for the purpose of the public welfare.

It is well known that the number of unclaimed bodies buried in the United Kingdom every year at the public expense is sufficient to supply all the medical schools with the material necessary for the training of surgeons and physicians, yet there are few if any schools which receive an adequate supply, and the majority never have anything like a sufficient supply.

That the supply known to exist is not available for the purpose for which it is essential is because, in many cases, members of the authorities to whom the legal control has been deputed give sentimental considerations more weight than considerations of the public welfare, and take means to evade the spirit of the Anatomy Act.

It is to be noted that only the bodies of those who have no relatives are placed by the Act at the disposal of the State, and surely no one in authority has any justification, in such circumstances, to placate sentiment at the expense of the public good.

The bodies which are sent to the Medical Schools suffer no disrespect; everything which is done to them is done under the control and inspection of H M Inspectors of Anatomy up to the time of the burial of the bodies in consecrated ground.

The public should realise that the loss which is suffered because the spirit of the Anatomy Act is so frequently evaded is the public loss, for the knowledge of the human body which is necessary for all practitioners of medicine and surgery can only be gained by the careful personal examination of the human body, and that examination can only be fully carried out on dead bodies; consequently, when the public call on their medical attendants for aid, the aid given is frequently less than it might have been because the medical attendant has not had the opportunities which the Anatomy Act was intended to give him.

The public should insist, for its own sake, that the spirit of the Anatomy Act shall be given full play, should hold the public authorities responsible for the efficient carrying out of the Act, and should demand that the authorities responsible shall make careful inquiry into the reason why any available material was not properly utilised.

ARTHUR ROBINSON.

